United Nations S/2006/65

Security Council

Distr.: General
30 January 2006

Original: English

Letter dated 30 January 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan addressed to the President of the Security Council

I have the honour to transmit herewith the final report of the Panel of Experts on the Sudan as requested by the Security Council in paragraph 3 (b) ii of resolution 1591 (2005).

The attached report was presented to the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan on 9 December 2005, and was subsequently considered in the Committee on 9 January 2006 once the report had been translated in all languages. The report is being circulated for the information of the Members of the United Nations.

The Committee intends to speedily complete a thorough consideration of the recommendations contained in the report, after which I will present the Committee's views on the report to the Security Council.

I would therefore be grateful if this letter and its annex were circulated to the members of the Security Council and issued as a document of the Council.

(*Signed*) Adamantios Th. **Vassilakis**
Chairman
Security Council Committee established pursuant to
resolution 1591 (2005) concerning the Sudan

05-63274 (E) 010206

Annex

Letter dated 9 December 2005 from the Panel of Experts on the Sudan addressed to the Chairman of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan

We have the honour to transmit herewith the final report of the Panel of Experts on the Sudan in accordance with paragraph 3 of Security Council resolution 1591 (2005).

Panel of Experts on the Sudan
(*Signed*) Sherrone **Blake-Lobban**
(*Signed*) Ernst J. **Hogendoorn**
(*Signed*) Eustace **Mainza**
(*Signed*) Gerard P. **McHugh**

Report of the Panel of Experts established pursuant to paragraph 3 of resolution 1591 (2005) concerning the Sudan

Summary

The Panel of Experts established pursuant to Security Council resolution 1591 (2005) conducted its work in four substantive task areas: (a) assisting in monitoring the implementation of the arms embargo imposed by resolutions 1556 (2004) and 1591 (2005); (b) assisting in monitoring the implementation of targeted financial and travel-related sanctions that may be imposed against individuals designated by the Committee established by resolution 1591 (2005); (c) provision of information to the Committee on individuals who impede the peace process, commit violations of international law or are responsible for offensive military overflights; and (d) development of recommendations on actions the Security Council may wish to consider.

The present report sets out the Panel's findings and recommendations in each of the three investigative areas mentioned above.

Implementation of the arms embargo

It is clear that arms, especially small arms and ammunition, continue to enter Darfur from a number of countries and from other regions of the Sudan. During its investigation the Panel determined that since the Security Council imposed an arms embargo on all non-governmental groups by its resolution 1556 (2004) of 30 July 2004, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) have continued to receive arms, ammunition and/or equipment from Chad, Eritrea, the Libyan Arab Jamahiriya, non-governmental groups and other unknown sources.

In addition, there have been numerous reports that the rebel groups receive financial, political and other material support from neighbouring countries including the Libyan Arab Jamahiriya, Chad and Eritrea. Furthermore, it appears that the Security Council's intent to deny arms to the so-called Janjaweed militia, through the adoption of resolution 1556 (2004), was circumvented by the fact that many of the militias were already formally part of the Government security organs or were incorporated into those organs, especially the Popular Defence Force (PDF), the border intelligence guard, the central reserve police, the popular police and the nomadic police, after the adoption of the resolution.

The Panel judges that the Government of Eritrea has provided, and probably continues to provide, arms, logistical support, military training and political support to both JEM and the Sudan Liberation Army (SLA). Training of JEM and SLA has reportedly occurred at a number of camps in Eritrea on the Eritrea-Sudan border.

The Panel was not able to determine whether material support for the rebels in Darfur emanating from Chad and the Libyan Arab Jamahiriya was official

Government policy or rather the independent actions of Government officials. However, it is clear that the Governments of Chad and the Libyan Arab Jamahiriya could do more to prevent violations of Security Council resolutions 1556 (2004) and 1591 (2005).

The Panel has received multiple, credible reports that the Sudan People's Liberation Movement/Army (SPLM/A) provided training and supplied arms and ammunition to SLM/A. It appears that shipments of arms facilitated by the Sudan People's Liberation Army continued until at least August/September 2004, after Security Council resolution 1556 (2004) had been adopted. It also appears that SPLM/A stopped its official support when it appeared that the Niavasha peace negotiations would be finalized. However, there are credible allegations of continued low-level smuggling of weapons and ammunition from southern Sudan into Darfur.

The proliferation of small arms and light weapons in Africa is an additional catalyst. Because of the many recent and ongoing wars in Africa, there is a thriving regional, and even intracontinental, trade in small arms and light weapons.

At the time of writing of this report, the Government of the Sudan has not submitted any request to the Committee for authorization to move weapons, military equipment, ammunition or military materiel into Darfur since the enhancement of the arms embargo by resolution 1591 (2005) on 29 March 2005. The Government, however, is well aware of its obligations in this regard, since the Panel has communicated this requirement many times to officials of the Government of the Sudan in meetings in New York, Khartoum and Darfur.

The Panel has found that the Government of the Sudan has violated and continues to violate the provisions of the arms embargo in the following ways:

Movement of arms into Darfur from other parts of the Sudan

- Troops with their weapons being withdrawn from southern Sudan in fulfilment of the Comprehensive Peace Agreement are being transferred to Darfur without prior notification or approval from the Committee. Interviews with officials in Khartoum and El-Fasher indicate that the Government is unwilling or unable to fulfil its obligations under paragraph 7 of Security Council resolution 1591 (2005).

- There are noticeably few heavy-weapons platforms (relative to known military holdings of the Government of the Sudan) in the areas of Darfur visited by the Panel. Only a relatively small number of tanks, armoured personnel carriers, artillery and attack helicopters were observed. It is quite likely that the arms embargo does have a very tangible impact on the deployment of easily observable heavy weapons.

Deployment of additional attack helicopters to Darfur

- The Government of the Sudan has reintroduced at least six Mi-24 attack helicopters into Darfur, after they had initially been withdrawn from the region. The Panel assesses that two of these helicopters have been used at least once in offensive attacks and continue to be used to assist offensive ground operations by Government forces.

- The Panel also collected evidence of the past supply/transfer of spare parts for military helicopters into Darfur, and believes that this supply continues at present.

- The Panel received information from several sources describing the use of recently imported white vehicles and white aircraft by the Sudanese armed forces in Darfur. The African Union (AU) has voiced its concern regarding the use of white vehicles to the Government of the Sudan on a number of occasions on the basis that the use of such vehicles could lead to misidentification of vehicles of the AU Mission in the Sudan (AMIS) by parties to the conflict in Darfur. This practice also presents a grave threat to humanitarian agencies, including those of the United Nations system, operating in Darfur.

- The Government of the Sudan continues to move administrative convoys into Darfur by road and air (the rebels continue to attack road convoys in order to capture arms and military supplies). In addition, the African Union has reported suspicious unannounced night-time aircraft landings and departures at El-Fasher airport and Nyala airport, when the airports are officially closed and inaccessible to AU monitors, and suspicious activities at the airstrip of Tine.

Key observations and recommendations

The existing border control situation in the Sudan creates a challenge for the effective implementation of the arms embargo. At present, the parties to the conflict seem to be able to bring weapons and military supplies into Darfur with relative ease. In addition, the rebels continue to receive training facilitated by parties in neighbouring States such as Eritrea.

In the light of the above, the Panel recommends a strengthening of the existing arms embargo. The following list of options is set forth, so as to present the Committee with different scenarios:

(a) Retain the present arms embargo and complement it with the installation of a verification/inventory component;

(b) Extend the arms embargo to include the entire territory of the Sudan;

(c) Extend the arms embargo to the entire territory of the Sudan and include appropriate exemptions for the Government of Southern Sudan and the Government of the Sudan.

Implementation of targeted financial and travel-related sanctions

By the time the Panel was finalizing the present report, the Committee had not yet designated any individual against whom the financial sanctions and the travel ban would be applied. For that reason, the Panel was unable to fulfil its mandate of assisting the Committee in monitoring the implementation of the targeted financial sanctions and travel ban. It is recommended that the Committee consider designating individuals against whom the sanctions should be applied.

Individuals who impede the peace process, commit violations of international law or are responsible for offensive military overflights

Individuals who impede the peace process

To assist in the provision of information to the Committee, the Panel identified nine categories of acts that may constitute impediments to the peace process or threats to stability in Darfur and the region: (a) ongoing hostilities and violations of the N'Djamena Humanitarian Ceasefire Agreement; (b) failure to comply with the provisions of the Protocol on the Enhancement of the Security Situation in Darfur signed at Abuja on 9 November 2004; (c) failure of the Government of the Sudan to identify, neutralize and disarm armed militia groups in Darfur; (d) exacerbation of tribal/ethnic tensions; (e) provision of support to parties that engage in ongoing hostilities; (f) hostile acts against AMIS personnel; (g) failure to enforce accountability for violations of international humanitarian law and international human rights law; (h) failure to fully implement Security Council resolutions concerning Darfur; and (i) acts that impede the actual process of negotiations.

The Panel has identified individuals who impede the peace process, using the nine categories outlined above, and has included the names of those individuals in a confidential annex to the present report.

The Government of the Sudan and SLA, and to a lesser extent JEM, have committed consistent, wilful and systematic violations of the N'Djamena Ceasefire Agreement. In addition, the Government of the Sudan has abjectly failed to fulfil its agreed commitments to identify, neutralize and disarm armed militia groups under its control or influence. Moreover, the Panel has found substantial evidence to demonstrate that the Government continues to support certain militia groups and indeed has on occasion engaged in coordinated military operations with armed militia groups. Several individuals have been identified as having committed acts intended to impede the work of AMIS, including perpetrating hostile acts against AMIS personnel.

Violations of international humanitarian and human rights law

The Panel found evidence of widespread violations of international humanitarian law in Darfur during the period from 29 March to 5 December 2005. The parties to the N'Djamena Ceasefire Agreement and other belligerents operating in Darfur, in particular the non-State militia groups, have undertaken military operations with scant regard for the principles of distinction, proportionality or military imperative in many cases. While all parties (SLA, JEM, the Government of the Sudan and militia groups) have violated the rules and norms of armed conflict, SLA, the Government of the Sudan and the militia groups have shown the least regard for the welfare of civilians.

The Government and militia groups have separately, and on some occasions acting in coordination, perpetrated indiscriminate attacks against civilians; intentionally targeted civilians and civilian objects; failed to take appropriate measures to distinguish between civilians and combatants and between civilian and military objects; destroyed civilian property; and engaged in rape and other forms of sexual violence. Moreover, the Government has on several occasions used force disproportionate to the military objectives. SLA and JEM have similarly engaged in

the acts mentioned above and SLA has, on at least one occasion identified by the Panel, killed detained combatants.

All parties, to varying degrees, have committed torture, outrages upon personal dignity and cruel, inhumane or degrading treatment against those who are not, or are no longer, participating in the conflict.

The Panel performed case study analyses of eight separate incidents and attacks that occurred in Darfur during the period under investigation. The purpose of the case study approach was to investigate specific incidents to determine whether or not the attack/incident constitutes a violation of international humanitarian law or international human rights law.

The pattern of violations of human rights in Darfur has changed markedly since early 2005. Whereas previously the large-scale attacks perpetrated by the parties to the conflict — particularly the Government of the Sudan and the militia groups — posed the most critical threat to the right to life, now the pattern has changed to reflect a large number of discrete violations (rather than large-scale violations). The Panel has gathered information on violations of the right to life, violations of the prohibition of torture; the incidence of rape and other forms of sexual violence; and arbitrary arrest and detention of individuals in Darfur. It is apparent that the people of Darfur are exposed to multiple, mutually reinforcing threats to fulfilment of their human rights. These threats are exacerbated by the perception and actuality of impunity afforded to perpetrators of crimes in many cases.

While the Government of the Sudan has put in place several important mechanisms to investigate and address violations of human rights and international humanitarian law in Darfur, the Panel has observed a significant implementation gap, whereby the effectiveness of these mechanisms on the ground is diluted by an inability and/or unwillingness to operationalize the institutional mechanisms.

The Panel has included information on individuals who commit violations of international humanitarian or human rights law in the confidential annex to the present report.

Offensive military overflights

The Panel identified several instances of the conduct of offensive military overflights since 29 March 2005, including the offensive use of a helicopter around Abu Hamra (near Shangil Tobayi, Northern Darfur) during incidents on 23 and 24 July 2005, and multiple instances of helicopters being used in support of offensive ground operations.

Observations and recommendations

- To the extent that Abdul Wahid Mohamed al-Nur and Minni Arko Minawi fail to take appropriate steps to reconcile competing perspectives and leadership ambitions in furtherance of the Abuja negotiations and in the best interests of their constituency, the Committee should monitor the actions of both individuals and consider designating these individuals as subject to the targeted measures in paragraphs 3 (d) and 3 (e) of resolution 1591 (2005) in the event that their future actions unduly impede the peace process.

- The Committee and the Security Council should adopt a "zero tolerance" approach to violations of the N'Djamena Ceasefire Agreement. Any future ceasefire violation reports verified by the Joint Commission should be used as the basis for direct action by the Committee against the leadership of the party found to violate the Agreement and against the local commanders that committed the offending act.

- In view of the abject failure of the Government of the Sudan to identify, neutralize and disarm the armed militia groups in Darfur, the Security Council should consider (a) subjecting individuals identified by the Panel in the present report as failing to disarm the militias to the targeted measures in paragraphs 3 (d) and 3 (e) of resolution 1591 (2005); and (b) additional measures against select members of the Government of the Sudan as provided for under Article 41 of the Charter.

- The Committee should consider for designation as subject to the provisions of subparagraphs 3 (d) and 3 (e) of resolution 1591 (2005) those individuals whom the Panel asserts, on the balance of probabilities, to have committed or to be responsible for acts of omission or commission that constitute violations of international humanitarian and human rights law.

- The Security Council should consider options for establishing a standing civilian protection monitoring capacity to monitor, investigate and report directly to the Council on acts that may constitute violations of international humanitarian and human rights law in Darfur.

- The Security Council should consider ways in which the provision of information to the Committee on individuals who commit violations of international humanitarian and human rights law can best further the objectives of the Council expressed in its other resolutions, including resolution 1593 (2005).

In the light of the use by the Government of the Sudan of attack helicopters in support of offensive ground operations and, on one occasion identified by the Panel, in direct offensive engagements, the Security Council should consider options for ensuring that the Government does not employ military air assets for offensive purposes in the future. Possible options for consideration include: (a) establishing a prohibition on the operation by the Government of the Sudan of all military aircraft in Darfur, except in cases where the use of such aircraft is approved in advance by the Committee in response to a request submitted by the Government of the Sudan; and/or (b) designation of those who request/authorize the use of air assets for offensive purposes (including their use in support of offensive ground operations) as subject to the provisions of paragraphs 3 (d) and 3 (e) of resolution 1591 (2005).

Contents

		Paragraphs	Page
	Abbreviations		11
I.	Introduction	1–8	12
II.	Context	9–48	13
	A. Overview	9	13
	B. Political situation	10–19	13
	C. Evolving security environment in Darfur	20–40	15
	D. Humanitarian situation in Darfur	41–48	18
III.	Programme of work	49–63	20
	A. Description of activities	49–54	20
	B. Cooperation and interaction with the Government of the Sudan	55–58	21
	C. Interactions with other key interlocutors	59–63	21
IV.	Methodology and working principles, constraints	64–77	22
	A. Overall approach	64–65	22
	B. Methodology and working principles	66–69	22
	C. Naming of individuals	70–71	24
	D. Working constraints	72–77	24
V.	Monitoring implementation of the arms embargo	78–137	25
	A. Overview	78–81	25
	B. Supply of weapons to opposition groups	82–101	26
	C. Violations by Arab militias	102–103	31
	D. Violations by the Government of the Sudan	104–126	32
	E. Observations and recommendations	127–137	37
VI.	Monitoring implementation of targeted financial and travel-related sanctions	138–140	40
	A. Targeted financial sanctions	138	40
	B. Travel ban	139	40
	C. Observations and recommendations	140	41
VII.	Individuals who impede the peace process, commit violations of international law or are responsible for offensive military overflights	141–277	41
	A. Overview	141–142	41
	B. Individuals who impede the peace process or constitute a threat to stability	143–165	41
	C. Violations of international humanitarian and human rights law	166–176	48
	D. Findings: violations of international humanitarian law in Darfur	177–249	50

E. Findings: violations of human rights in Darfur ... 250–263 65
F. Offensive military overflights ... 264–269 67
G. Observations and recommendations ... 270–277 69

Annexes

I. List of institutions consulted ... 72
II. Additional background information on the security context ... 76

Tables

1. Categories of acts or omissions that constitute impediments to the peace process or threats to stability in Darfur and the region ... 42
2. Case studies on significant incidents or attacks considered by the Panel ... 52

List of figures

1. SLA modified truck ... 26
2. SLA heavy truck with anti-aircraft armament ... 27
3. Government military vehicle ... 27
4. Mi-24 helicopter of the Government of the Sudan at El-Fasher airport on 21 September 2005 ... 34
5. Government Mi-8 helicopter undergoing maintenance/repair, El-Fasher airport, Darfur, 18 September 2005 ... 35
6. Use of white vehicles by Government of the Sudan armed forces ... 36
7. Attack on Tawilla by Government forces, 29 September 2005 ... 62
8. 57-mm SKOG air-to-ground rocket found at Abu Hamra and flechettes from SKOG air-to-ground rocket ... 69

Abbreviations

AMIS	African Union Mission in the Sudan
AU	African Union
FRC	Field Revolutionary Command
JEM	Justice and Equality Movement
NIF	National Islamic Front
NMRD	National Movement for Reform and Development
PDF	Popular Defence Force
SLA	Sudan Liberation Army
SLM	Sudan Liberation Movement
SLM/A	Sudan Liberation Movement/Army
SPLA	Sudan People's Liberation Army
SPLM/A	Sudan People's Liberation Movement/Army
UNICEF	United Nations Children's Fund
UNMIS	United Nations Mission in the Sudan

I. Introduction

1. In paragraph 3 of its resolution 1591 (2005) of 29 March 2005, the Security Council requested the Secretary-General, in consultation with the Committee established under the same resolution, to appoint a Panel of Experts for a period of six months to assist the work of the Council and the Committee.

2. The Panel of Experts was appointed by the Secretary-General on 30 June 2005 (see S/2005/428) and the four Panel members convened in New York on 18 July 2005 to commence their work. Under resolution 1591 (2005), the Panel is mandated to undertake the following substantive tasks:

(a) To assist the Committee in monitoring implementation of the measures in paragraphs 7 and 8 of resolution 1556 (2004) and paragraph 7 of resolution 1591 (2005), that is, provisions concerning the arms embargo;

(b) To assist the Committee in monitoring implementation of the measures in paragraphs 3 (d) and 3 (e) of resolution 1591 (2005), that is, provisions concerning targeted financial and travel-related sanctions; and

(c) To make recommendations to the Committee on actions the Security Council may want to consider.

3. Moreover, the Panel is identified in paragraph 3 (c) of resolution 1591 (2005) as a source of information to the Committee regarding individuals who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities, violate the measures implemented by Member States in accordance with paragraphs 7 and 8 of resolution 1556 (2004) and paragraph 7 of resolution 1591 (2005) as implemented by a State, or are responsible for offensive military overflights described in paragraph 6 of resolution 1591 (2005).[1]

4. Taken together, these mandated tasks and the identification of the Panel as a source of information to the Committee on specific issues constitute the four main substantive task areas of the Panel (three investigative/research areas and one task area to develop recommendations).

5. For all aspects of the Panel's work except those pertaining to monitoring implementation of the measures imposed by paragraphs 7 and 8 of Security Council resolution 1556 (2004), the temporal scope of research and investigation commenced on 29 March 2005 (date of adoption of resolution 1591 (2005)). The temporal scope of investigation for those elements of the mandate pertaining to resolution 1556 (2004) commenced on 30 July 2004.

6. In addition to these substantive task areas, the Panel was requested to travel regularly to El-Fasher, Northern Darfur, and other locations in Sudan from a base in Addis Ababa, Ethiopia; to coordinate its activities as appropriate with the ongoing operations of the African Union Mission in the Sudan (AMIS); to provide a midterm briefing and an interim report to the Committee; and to provide a final report to the Council through the Committee with its findings and recommendations.

[1] The other sources of information identified in paragraph 3 (c) are Member States, the Secretary-General, the United Nations High Commissioner for Human Rights and "other relevant sources".

7. The Panel provided its midterm briefing to the Committee on 7 October 2005 and its interim report to the Committee, through the Secretariat, at the beginning of October 2005. The present report constitutes the final report of the Panel, covering the period from 18 July to 5 December 2005.

8. The following sections present the Panel's findings and recommendations and describe procedural aspects of the Panel's work. Section II describes three dimensions (political, security and humanitarian) of the context within which the Panel undertook its work. Section III describes the programme of work of the Panel, while section IV presents the approach and methodology which guided the work of the Panel. This section also describes some of the challenges encountered by the Panel in discharging its mandate. Sections V, VI and VII present the findings and recommendations of the Panel in the three investigated areas of its work.

II. Context

A. Overview

9. This section describes three dimensions of the context within which the Panel undertook its work — the political, security and humanitarian situation in Darfur. Additional background information on the security situation in Darfur is provided in annex II to the present report.

B. Political situation

10. The civil war in Darfur has long and complex roots, and all parties to the conflict relate past grievances to justify their participation in the current war. Violence is not new to Darfur; low-level conflict — aided and abetted by a persistent lack of law and order in the region — has periodically flared into large-scale "tribal" clashes, which generally pitted nomadic pastoralists against sedentary farmers. Friction over access to water, migratory routes and grazing areas among herders and between herders and farmers has been exacerbated by desertification, population growth, the decline in traditional authority, political and economic marginalization and the legacy of past conflict. Political actors have frequently manipulated these tensions to further their own aims.

11. Darfur has also served as, and continues to be, a staging area and sanctuary for insurgent groups against the national authorities of Chad and the Sudan. These groups have at various times received financial, logistical and military support from different regional and extraregional Governments.[2] The proliferation of small arms and light weapons and of men trained to use these weapons in Darfur has increasingly militarized conflict.

12. Fighting in Darfur escalated to a new level in early 2003 when two non-State armed groups, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) scored a series of military victories against Sudanese

[2] See, for example, Julie Flint and Alex de Waal, *Darfur: A Short History of a Long War* (London, Zed Books, 2005), Gérard Prunier, *Darfur, the Ambiguous Genocide* (Ithaca, N.Y., Cornell University Press, 2005) and Douglas H. Johnson, *The Root Causes of Sudan's Civil Wars* (Bloomington and Indianapolis, Indiana, Indiana University Press, 2003).

military and police bases and outposts in Darfur. The Government of the Sudan, overstretched by the ongoing conflict in the south of the country and fearful of how the Sudanese armed forces, which had recruited heavily from Darfur, would perform against their own people — responded by arming allied tribal militias largely under the guise of rapidly recruiting large numbers of personnel into the Popular Defence Force (PDF), a parallel military organization to the Sudanese army, the border intelligence guard, the central reserve police and other paramilitary organizations.[3]

13. The intensified conflict in Darfur resulted in large-scale violations of international humanitarian law and human rights law. A very large, but unknown, number of civilians were killed in direct attacks and by the subsequent war-induced humanitarian crisis.

14. In April 2004, the N'Djamena Humanitarian Ceasefire Agreement was signed between the Sudan Liberation Army (SLA), JEM and the Government of the Sudan. This ceasefire has been violated (with varying degrees of frequency) by all parties to the agreement (see section VII.B below). Subsequent to the signing of the N'Djamena Ceasefire Agreement, the African Union (AU) authorized the deployment of an observer mission, the AU Mission in the Sudan (AMIS), to ensure implementation of the ceasefire. The large land area of Darfur and the logistical challenges of operating there make the AMIS operation very challenging. The size of AMIS has been gradually expanded and is currently authorized for 7,700 personnel.

15. At the same time that the conflict in Darfur was escalating, the Government of the Sudan was negotiating a separate peace agreement with the Sudanese Peoples Liberation Army (SPLA) in the south of the country, resulting in the signing of the Comprehensive Peace Agreement on 9 January 2005. Among other things, the Agreement called for the creation of a Government of National Unity, which was inaugurated in September 2005.

16. Attempts to broker a peace agreement in Darfur continue under AU auspices in Abuja. As of the writing of this report, all the major parties to the conflict are attending the current seventh round of negotiations ("Abuja VII"). Negotiations in Abuja have been greatly hampered by divisions within and among the rebel movements of Darfur.

17. Most problematic has been a year-long leadership struggle within the Sudan Liberation Movement (SLM) between its Chairman, Abdul Wahid Mohamed al-Nur (a member of the Fur tribe) and the former Secretary-General, Minni Arko Minawi (a member of the Zaghawa tribe), who was elected as the "new" chairman in November 2005 at an SLM congress that Abdul Wahid refused to attend. In addition, SLM and JEM, which both claim to represent all Darfurians, have often held divergent negotiating positions and pursued different negotiating strategies. As at early December 2005, it appears that the movements are attempting to present a unified position at the current round of negotiations at Abuja.

18. However, two small splinter groups from JEM, the National Movement for Reform and Development (NMRD) and the Field Revolutionary Command (FRC), have begun targeting AMIS patrols in an attempt to secure inclusion in the Abuja process.

[3] The structure of some of these forces is described in annex II to the present report.

19. Finally, it should be recognized that the conflict in Darfur has further polarized already strained tribal relations, is hardening ethnic divisions between "Africans" and "Arabs", and is forcing tribes to choose between the rebels and the Government. Few people have been spared in the conflict, and even those tribes not involved in the conflict have suffered severely from the collapse of the local economy and chronic insecurity. Even if a peace is negotiated by the parties at Abuja, much will need to be done at a local level to achieve meaningful tribal reconciliation and create an environment conducive to peace and development. Tribal reconciliation is possible — and it has occurred in a few instances — but only if genuine tribal leaders are involved and it is not dictated from above by the Government of the Sudan or the international community.

C. Evolving security environment in Darfur

Overview

20. Armed conflict continues in Darfur, albeit at a significantly lower level than in late 2003 and 2004. The lower level of conflict is attributable to a number of factors, including the presence of AMIS forces, the flight of most of the population from heavily contested areas to internally displaced persons camps and refugee camps, pressure by the international community, and consolidation of areas of control by the warring parties.

21. The surge in armed attacks and skirmishes since late August 2005 is a result of political jockeying within SLM — between Abdul Wahid and Minni Arko Minawi — and among SLM, JEM and the Government of the Sudan around the peace negotiations in Abuja. Another factor is the end of the rainy season, with the concomitant resumption of movement by herders and their attendant militias. Tribal militias allied to the Government until now are increasingly pursuing their own agendas. Furthermore, the Government is reinforcing its forces in Darfur.

22. A number of significant attacks on villages have occurred since the end of August, resulting in the killing and displacement of civilians. Furthermore, it appears that in some instances crops are being deliberately destroyed by nomadic groups and their livestock. More ominously, large-scale attacks on villages continue and appear to be increasing. On 28 September 2005, Aro Sharow internally displaced persons camp and the villages of Acho and Gozmena were attacked by armed militias, resulting in the death of at least 32 people and the looting and burning of many homes. On 23 October, militias carried out an attack on the Fur village of Tama (Southern Darfur) that left dozens of civilians dead and many more injured. Some 240 families fled and were unable to harvest their crops.

23. During September 2005, United Nations accessibility in Darfur dropped to 70 per cent overall, the lowest rate since April 2004, particularly in Western Darfur State where all roads out of the capital, Geneina, have been declared "United Nations no-go". In November fighting in Southern Darfur State forced up to 18,000 people to flee to the town of Gereida. While most of the violence occurred between members of the Masalit and Falata tribes, the fighting in the Gereida area involved a volatile mix of various armed groups, including JEM, SLM/A and Government armed forces.[4] In late November, Government forces, supported by Mi-24 attack

[4] "Sudan: New IDPs seek refuge in Gereida, South Darfur", United Nations Integrated Regional Information Network, 1 December 2005.

helicopters apparently flying reconnaissance, attacked rebel positions in the Jebel Moon area of Western Darfur. There are indications that attacks will continue in the short term and the security situation in Darfur will remain volatile, with escalation of violence a distinct possibility.

24. The Panel, AMIS and other international observers have witnessed a build-up or mobilization of Government forces in Darfur in recent months.[5] This, combined with reports of increased surveillance and reconnaissance flights by Government aircraft, suggests that the Government of the Sudan may be preparing for or anticipating expanded military operations in Darfur.

25. Another very worrying trend is the increasing autonomy of tribal militias, who are increasingly pursuing their own agendas. The chronic security situation in Western Darfur is a case in point. Even after promises by the State Government to implement joint military and police patrols on the highways in order to ensure security, lawlessness and banditry have reached such dangerous levels that all roads out of Geneina remain open to United Nations staff only under strict security procedures.

Structure of the Government security apparatus

26. The security structure of the Government of the Sudan is intentionally opaque and quite complicated, even to insiders. There are a number of competing armed forces and intelligence services that formally report to the military chain of command or the Director-General of the National Intelligence and Security Service, but also have separate reporting channels that go directly to the President.

27. The Supreme Commander of the Sudanese armed forces is Lt. General Omer Hassan Ahmad al-Bashir, who holds both the post of National President and Commander-in-Chief of the Armed Forces and the Popular Defence Force. Operational control is exercised through the Minister of Defence, Major General Abdul Rahim Mohamed Hussein. The Minister of Defence appoints a Commander of the Armed Forces and Chief of General Staff, General Abbas Arabi, who together with five deputy chiefs of staff (operations, intelligence, logistics, administration and training and morale) form the Committee of the Joint Chiefs of Staff.

28. Planning for all operations is conducted in Khartoum by the Committee of the Joint Chiefs of Staff. The Director of Operations carries out the operations through regional commanders who have operational control over division and brigade commanders in their region. For outlines of the various military/intelligence structures of the Government of the Sudan, see annex II to the present report.

Structure of the Sudanese armed forces in Darfur

29. The three States of Darfur comprise the Western Military Region, one of 10 military commands in the Sudan. The headquarters of the Sudanese armed forces

[5] Given the Government's unwillingness to disclose the number and type of troops it controls in Darfur, it is difficult to distinguish aggregate troop increases from temporary redeployments within Darfur. However, on the basis of observations that troops levels are apparently increasing in all three capitals of the Darfur States, and the transfer of Government forces from southern Sudan to Darfur, the Panel is of the view that the Government of the Sudan is reinforcing its forces without notifying the Committee established pursuant to Security Council resolution 1591 (2005).

Western Military Region is at El-Fasher. The current Western Region Commander is Major General Gaffar Mohamed el-Hassan. The Commander formally controls two regular army divisions, the 6th Infantry Division based in El-Fasher (for Northern and Western Darfur) and the 16th Infantry Division based in Nyala (for Southern Darfur). Subordinate brigades are located in major towns in Darfur, which in turn deploy battalions in smaller towns (and so on to the company level). According to one informed source, there are some 263 garrisons within the Western Military Region.[6]

30. In addition to regular army units, the Government of the Sudan has deployed and recruited other specialized units and paramilitary organizations, including the Popular Defence Force (PDF), the border intelligence guard and the central reserve police.[7]

31. PDF members are mobilized and recruited by tribal leaders and sheikhs. PDF provides arms, uniforms and training to the recruits, who are then integrated into the regular army for operations. At that point, the recruits come under regular army command and normally wear the same uniform as the unit into which they are inducted.[8]

32. The Government of the Sudan also began recruiting new border intelligence guard units (controlled by Military Intelligence) in Darfur in early 1993. Reports suggest that some 3,000 border intelligence troops have been recruited and deployed in Darfur.

33. The Ministry of the Interior also trains central reserve police forces and deploys them to Darfur, where they are known as "police soldiers". While these troops are nominally part of the Sudanese police hierarchy, they can be, and have been, used in joint combat operations under the tactical control of the Sudanese army.[9]

Non-State militia groups operating in Darfur

34. At the beginning of the Darfur crisis, General Ibrahim Suleiman, Governor of Northern Darfur, advised against arming the tribal militias, fearing that it would have long-term repercussions for Darfur.[10] However, he was overruled by the security forces, which had used militias in southern Sudan to combat SPLA.

35. In a widely publicized comment addressed to the citizens of Kulbus, a town the rebels had failed to overrun in December 2003, President Al-Bashir said: "Our priority from now on is to eliminate the rebellion, and any outlaw element is our target ... We will use the army, the police, the mujahedeen, the horsemen to get rid of the rebellion."[11]

---

[6] Confidential information provided to the Panel, November 2005.

[7] There are also the popular police and the nomadic police, who have even less combat training but are also provided with uniforms and weapons (assault rifles and vehicle-mounted heavy machine guns).

[8] Interview with Lt. Col. Al-Amin, PDF Commander, Southern Darfur, Nyala, 28 August 2005.

[9] Interview with Major General Ismat Zain al-Din, November 2005.

[10] Interview with General Ibrahim Suleiman, Khartoum, 29 September 2005, and Julie Flint and Alex de Waal, op. cit., p. 102.

[11] "Sudanese president says war against outlaws is government priority", Associated Press, 31 December 2003.

36. The International Commission of Inquiry on Darfur found that, when faced with the rebellion in Darfur launched by SLM/A and JEM in early 2003, the Government called on a number of Arab tribes to assist in the fight (see S/2005/60). Some tribal leaders with relationships with both local and central Government officials played a key role in recruiting and organizing militia members and liaising with Government officials.

37. The Commission and the Panel also received credible evidence that the ranks of the militia groups include fighters from neighbouring countries, primarily Chad and the Libyan Arab Jamahiriya.

38. Contrary to the popular impression that the "Janjaweed" were independent militias, only loosely allied to the Government of the Sudan, it appears that many of the militias were formally enlisted into PDF and the border intelligence guard. This is the claim of a number of prominent Arab tribal leaders.[12] The Panel also interviewed a number of soldiers captured by SLA who gave credible and detailed descriptions of how tribesmen were asked to fill out forms and issued weapons and identification cards.

39. For example, a private stationed at the Kebkabiya headquarters of the 7th Infantry Brigade (commanded by Brigadier General Jacob Hamid Isaac) described how in April 2003, Musa Hilal brought in some 3,000 men who were taken through the proper enlistment procedure (two forms) and issued arms and identification cards. Soon thereafter they were sent to nearby Misteriyah, where they were still supplied with weapons, ammunition and food rations, at least until April 2004.[13]

40. Militia recruits were paid a relatively good salary for Darfur: $79 a month for a man on foot and $117 if he had a horse or a camel. Officers could get as much as $233. The weapons were provided in training camps.[14] Training of all the newly recruited forces however was minimal.[15]

D. Humanitarian situation in Darfur

41. This section provides a brief summary of humanitarian conditions in Darfur and identifies some of the challenges and opportunities associated with the provision of humanitarian assistance and protection, for the purposes of capturing the humanitarian context within which the Panel undertook its work. In particular, the challenges to humanitarian action are noted here as some of them may affect, or be affected by the work of the Panel in fulfilling its mandate.

42. Indicators of health and well-being in Darfur point to a general stabilization of humanitarian conditions over the period from July to November 2005. Nonetheless, large numbers of people still require some form of ongoing humanitarian protection

[12] For example, Musa Hilal claims that members of this tribal militia were recruited into PDF. Human Rights Watch, "Video transcript: exclusive video interview with alleged Janjaweed leader", available at http://hrw.org/english/docs/2005/03/02darfur10225.htm.

[13] Interview with prisoner of war, SLA central prison, Gawa, Southern Darfur, 14 November 2005.

[14] Human Rights Watch, *Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in Western Darfur*, May 2004, p. 46.

[15] Interview with Major General Ismat Zain al-Din, Director of Operations (former Commander, Western Military Region, 2003-2004) 15 November 2005.

or assistance.[16] The primary challenge to the provision of assistance and protection is the prevailing insecurity in the three States of Darfur, which is characterized by ongoing, low-intensity conflict between parties to the N'Djamena Ceasefire Agreement and other belligerents; the general high level of lawlessness; banditry; and a perception of impunity or limited accountability for those who attack persons who are not, or are no longer, participating in hostilities. The security environment has significantly constrained humanitarian access to certain areas, notably in Western Darfur.

43. Hostilities between belligerents not only pose a physical security risk but prevent or discourage civilians from cultivating crops, travelling to market areas and engaging in other important activities. Acts of banditry targeted towards humanitarian convoys and personnel restrict the ability of humanitarian organizations to operate effectively and thus impinge on humanitarian conditions.

44. Humanitarian conditions are summarized below in the four key sectors of health, food and nutrition, water and sanitation and education, which collectively form a vital core of the human security needs of individuals.

45. In the health sector, the overall reduction in the intensity of hostilities and attacks compared to 2003 and 2004, the provision of food and other humanitarian assistance, and the concentration of a large percentage of the population in areas where they have access to some services that they previously could not access, have all contributed to a reduction in the mortality rate from 0.72 to 0.48 deaths per 10,000 persons per day over the past year. By the end of August 2005, the United Nations Children's Fund (UNICEF) was providing support to 245 primary health-care facilities serving an estimated 2.01 million persons. This marks a significant improvement since the end of December 2004, when the number of health centres and of beneficiaries stood at 144 and approximately 1.4 million, respectively.[17]

46. The nutritional status of the population in Darfur, and of children in particular, has also improved, with reductions in the average malnutrition rate from 21.8 per cent in 2004 to 11.9 per cent in 2005. Notwithstanding these improvements, food security remains volatile. A large portion of the affected population will remain dependent on food assistance. The cereal deficit for 2006 is expected to be between 374,000 and 507,000 metric tons. The impact of positive factors such as a good rainy season and increased cultivation of crops — which are expected to result in an 80 per cent increase in agricultural output — could be diminished by the prevailing insecurity and the difficulty of ensuring sustained access to cultivated lands during the harvest season.

47. Improved access to safe water and other improvements in water and sanitation have also contributed to the reductions in mortality and malnutrition rates. In the education sector, UNICEF in October 2005 reported an increase in primary school enrolment of 70,000 over a 120-day period.

48. Continued stabilization and improvement in humanitarian conditions is dependent on increased security for the people of Darfur and for humanitarian

[16] For an overview of the humanitarian situation in Darfur, see the series of humanitarian profiles produced by the Office for the Coordination of Humanitarian Affairs, available online at www.humanitarianinfo.org/darfur.

[17] *UNICEF Darfur Emergency: August-September 2005 Report* (New York, UNICEF, October 2005).

organizations that seek to provide temporary assistance to those in need. The current volatile situation poses multiple threats to the health and well-being of people in Darfur, especially those groups whose vulnerability has increased as a result of the conflict.

III. Programme of work

A. Description of activities

49. The Panel commenced its work on 18 July 2005 and consulted with the Committee soon thereafter in New York. The Panel held a broad range of meetings and consultations in New York with various departments and branches of the Secretariat, the United Nations system more broadly, permanent missions of Member States, including the Sudan, and non-governmental organizations. A list of institutions consulted by the Panel in various locations is provided in annex I to the present report.

50. After a series of consultations in the United States of America and Europe, the Panel travelled to Addis Ababa, on 11 August and established a base of operations from which to conduct its work. The Panel travelled to Khartoum on 21 August and met with and briefed senior representatives of the Government of the Sudan, the United Nations Mission in the Sudan (UNMIS) and the African Union concerning its work and mandate.

51. The Panel travelled later in August to the three States of Darfur and conducted a series of meetings with representatives of the Government, UNMIS and various agencies operating in Darfur. The Panel also visited Port Sudan before proceeding to Chad, where it held meetings and consultations with various ministries of the Government of Chad and consulted with United Nations agencies in N'Djamena before proceeding to Abeche and onwards to the eastern border of Chad (with the Sudan).

52. At the end of September the Panel travelled to New York to present its midterm briefing and interim report to the Committee. The Panel members departed New York in mid-October. Three members travelled to Abuja for meetings with Salim Ahmed Salim, AU chief negotiator for the Abuja process, and his team, and with the assembled parties and observers at the periphery of the Abuja talks.

53. The Panel returned late in October to Khartoum where it held meetings with representatives from various components of UNMIS, the Government of the Sudan and AMIS. On 27 October the Panel travelled to El-Fasher, Darfur, where it met with the senior leadership of AMIS at the force headquarters in El-Fasher and with a range of other interlocutors. Panel members travelled to several other locations in Darfur during the month of November, including Tine and Geneina, Western Darfur; Tawilla, Northern Darfur; and Nyala, Haskanita, Dirbat and Sunni, Southern Darfur.

54. The Panel returned to Addis Ababa in late November to draft the present report.

B. Cooperation and interaction with the Government of the Sudan

55. Upon arrival in Khartoum during its first visit to the Sudan (21 August-7 September 2005), and also during subsequent visits, the Panel met with the designated focal point for Security Council resolution 1591 (2005) within the Ministry for Foreign Affairs. The Panel also met with the Under-Secretary of the Ministry for Foreign Affairs, Mutrif Siddiq. The Ministry for Foreign Affairs facilitated meetings for the Panel with other branches of the Government and acted as the focal point for information requests for the Panel.

56. During its first and subsequent visits to Darfur, the Panel engaged with the Government officials in Southern, Western, and Northern Darfur, including the Governors (*Wali*) of the three Darfur States and representatives from the police, armed forces, national security and other Government agencies. The Panel used these meetings as an opportunity to inform the relevant authorities of its mandate and the approach it took to its work.

57. On two occasions (on 21 September and 5 November 2005), the Panel was harassed and detained by Sudanese Military Intelligence in Darfur. In addition to constituting a serious physical security risk to the Panel members, the harassment and detention constituted a serious and unacceptable impediment to the work of the Panel. Moreover, the incidents represented a clear violation of the immunities and privileges accorded to the Panel members as United Nations experts on mission.

58. The Panel experienced varying levels of cooperation from Government ministries in response to its requests for information. Specifically, the Ministry of Defence declined to provide information which would have greatly assisted the Panel's work. This included information about troop transfers, troop numbers and disposition, and the number and nature of "administrative" resupply convoys. Moreover, the Commander of the Western Military Region would only facilitate interviews for the Panel with Sudanese officers at the brigade commander level or above.

C. Interactions with other key interlocutors

59. The Panel was mandated to coordinate its activities with the ongoing operations of AMIS. Moreover, the Security Council, by resolution 1591 (2005), had invited the African Union (specifically the AU Ceasefire Commission) to share information with the Panel. During its initial meetings with the Panel, the African Union expressed a desire to put in place a formal agreement with the United Nations to facilitate the provision of information to the Panel by the African Union and AMIS. This matter was communicated to the Secretary of the Committee and a letter was subsequently sent by the Chairman of the Committee to the African Union. The African Union and AMIS subsequently gave the Panel full access to information relevant to its work, beginning in November 2005.

60. In the light of the identification of the Panel as a source of information for the Committee on individuals who commit violations of international humanitarian or human rights law, and the separate referral by the Security Council of the situation in Darfur to the International Criminal Court by resolution 1593 (2005), the Panel

sought clarification from the Committee at the outset of its work on the manner in which it could or should engage with the Court.

61. From the outset the Panel communicated in its meetings with interlocutors that its work was distinct and separate from that of the International Criminal Court, and that the Panel had a purely technical, fact-finding mission to assist the work of the Council and the Committee. The Panel made it clear that it did not work on behalf of the International Criminal Court.

62. The Panel met on three occasions with representatives of the International Criminal Court, initially to introduce its members and to inform the Court of its work in the light of the separate and distinct mandates accorded to the Panel and to the Court, and later to maintain a liaison relationship. In September 2005 the Panel sent a letter to the Court requesting access to materials gathered and produced in the course of the work of the International Commission of Inquiry on Darfur, which had been transferred to the Court by the Office of the United Nations High Commissioner for Human Rights earlier in 2005.

63. The Panel received excellent logistical support from UNMIS while undertaking its work in Khartoum, Darfur and other locations in the Sudan. In addition, the Panel took the opportunity to liaise with members of the Group of Experts on the Democratic Republic of the Congo, in order to share information of mutual interest.

IV. Methodology and working principles, constraints

A. Overall approach

64. In discharging its mandate the Panel remained fully cognizant of the political developments that occurred (a) between the adoption of resolution 1591 (2005) and the commencement of the work of the Panel; and (b) during the course of the Panel's work. Several interlocutors with whom the Panel met asserted that the work of the Panel should be viewed differently in the light of recent, positive political developments. The Panel maintained the view throughout that it had a technical task to perform and that, absent direction by the Committee to the contrary, it would endeavour to fully discharge its mandate in a proactive manner.

65. The Panel viewed its work as complementary to the ongoing political processes — especially the Abuja process — and as assisting in implementing measures that could deter and hold to account individuals who might otherwise choose to impede the peace process, violate the arms embargo or commit violations of international humanitarian and human rights law. In undertaking its work the Panel sought to consult and engage constructively with as broad a range of stakeholders as possible so that the full spectrum of perspectives could be reflected in its findings and recommendations.

B. Methodology and working principles

66. The methodology employed by the Panel in undertaking its three main investigative/research task areas consisted of the following elements: (a) a comprehensive literature, documentation and data review; (b) analysis of existing

information; (c) conducting of interviews; (d) field research and investigation; (e) further analysis based on field research and investigations; and (f) presentation of findings and development of recommendations.

67. In conducting its research, investigations and analysis in each of the three investigative task areas, the Panel employed a process tracing methodology. The process tracing methodology identifies successive links in a process (e.g. the supply of weapons) by elaborating the various steps in the process and verifying the main actors in the process through interviews, field research, documentation review and analysis. This approach was also used by the Panel to identify command structures within the various parties to the N'Djamena Ceasefire Agreement and other groups operating in Darfur. Moreover, this methodology assisted in identifying cause-effect relationships and in elaborating and substantiating the intermediate steps linking cause and effect.

68. The Panel used processes of data triangulation to verify and validate the information it gathered. The Panel set for itself a standard of verification that required the verification and validation of information by a minimum of two independent and verifiable sources. In this regard the Panel took note of the recommendations concerning the capacity of expert panels and monitoring mechanisms developed under the Stockholm Process on the Implementation of Targeted Sanctions, especially as they relate to evidentiary standards for expert panels.[18]

69. The Panel undertook its work according to the following working principles:

Confidentiality

- The Panel operated on the general principle that the use and citation of information provided to or gathered by the Panel would be dictated by the originating source.
- The Panel identified three categories of information and the attendant confidentiality measures: Category A — Information in the public domain (Use and citation without restriction); Category B — Information provided to the Panel for conditional use/citation (Use and citation in accordance with criteria defined by originating source); and Category C — Information for which the source is not to be identified under any circumstances.

Impartiality and transparency

- The Panel endeavoured to communicate its mandate and approach clearly and consistently to all interlocutors and advised all interlocutors that it was seeking to engage with all stakeholders in an unbiased manner.

Right of reply and due process

- To the greatest extent possible given the logistical and security constraints, the Panel sought to provide a "right of reply" to any individuals whom it might identify in its findings as having committed acts that fall within the

[18] Peter Wallensteen and others, eds., *Making Targeted Sanctions Effective: Guidelines for the Implementation of United Nations Policy Options* (Uppsala, Uppsala University Department of Peace and Conflict Resolution, 2003), paras. 66-105.

investigative scope of the Panel. The Panel is eager to ensure "due process" in providing information to the Committee in accordance with its mandate.

C. Naming of individuals

70. For the areas of its work relating to the provision of information to the Committee on individuals who impede the peace process, commit violations of international humanitarian and human rights law, or are responsible for offensive military overflights, the Panel has decided to provide this information in the form of a separate, confidential annex to the present report. This decision was motivated by (a) the desire not to give advance "warning" to those whom the Committee might decide to designate as being subject to the measures specified in paragraphs 3 (d) and 3 (e) of Security Council resolution 1591 (2005); (b) the desire to provide a window of opportunity for the Committee and the Council to fully consider the information provided on individuals identified before the names are made public; and (c) the desire not to compromise the ongoing investigations of the Panel on certain individuals or the work of other competent bodies pursuing investigations in Darfur.

71. The Panel recommends that the Committee and the Council identify publicly those individuals whom the Council decides to subject to the measures in paragraphs 3 (d) and 3 (e) of resolution 1591 (2005). In instances where the Panel recommends possible future designation of individuals by the Committee as being subject to those measures, on the basis of those individuals taking or abstaining from certain actions (conditional naming of individuals), the Panel has opted to identify such individuals directly in the report.

D. Working constraints

72. The Panel encountered significant constraints to its work in terms of (a) access to information; (b) instances of harassment by the Government of the Sudan; (c) travel constraints; (d) time and resource constraints; and (e) concerns for the safety of interlocutors.

73. Restricted access to information pertaining to the three substantive areas of investigation/research of the Panel constituted the single most important constraint on its work. The Panel engaged in a lengthy series of interactions with the African Union, beginning in early August 2005, to access information critical to fulfilment of its mandate. The Panel only received full access to the information beginning in mid-November 2005, and therefore has not been able to take full advantage of this important source of information.

74. The instances of harassment by the Sudanese Military Intelligence to which the Panel was exposed (see para. 57 above) constituted a serious impediment to its work, not least by posing a physical security risk to members of the Panel and to United Nations staff members supporting them.

75. The Panel encountered travel constraints within Darfur owing to the security situation in certain areas, and also owing to logistical constraints (e.g. occasional fuel shortages; unavailability of aircraft). Moreover, prior to the beginning of November, the Panel was not in a position to explore the possibilities of travelling

in AMIS vehicles to certain locations. While this may have been possible during November, the Panel was subject to additional travel restrictions resulting from United Nations policies for United Nations personnel travelling with AMIS.

76. The Panel faced significant time and resource constraints. The time within which the Panel was mandated to complete its work permitted limited investigation in certain areas, and necessitated the adoption of a case study approach to target its investigations. Moreover, the Panel encountered personnel and budgetary constraints. Specifically, it was not provided with the full additional personnel resources it requested.

77. The Panel undertook to avoid situations that could expose interlocutors (especially in the Sudan) — including victims, eyewitnesses to attacks and civil society organizations — to a risk of harassment or threats to their physical security by security services of the Government of the Sudan (Military Intelligence, National Intelligence and Security Service, and others) as a result of their interactions with the Panel.

V. Monitoring implementation of the arms embargo

A. Overview

78. On the basis of field research, interviews conducted by the Panel and information provided by sources, it is clear that arms, especially small arms and ammunition, continue to enter Darfur from a number of countries and from other regions of the Sudan.

79. The Panel has received numerous reports and allegations which indicate that the Government of the Sudan and rebel groups continue to violate the arms embargo. However, due to the time constraints and the need to maintain a rigorous investigative methodology (see section IV above), the Panel has not been able to investigate and validate or refute all credible allegations or include them in the present report. During its investigation the Panel determined that, since the Security Council imposed an arms embargo on all non-governmental groups on 30 July 2004, by resolution 1556 (2004), SLA/M and JEM have continued to receive arms, ammunition and/or equipment from Chad, Eritrea, the Libyan Arab Jamahiriya, non-governmental groups and other unknown sources.

80. In addition, there have been numerous reports that the rebel groups receive financial, political and other material support from neighbouring countries including the Libyan Arab Jamahiriya, Chad and Eritrea. The Panel has sent letters of request for information and clarification to the Governments of Chad and the Libyan Arab Jamahiriya. Replies to the questions transmitted by the Panel to the Libyan Mission and to Chadian officials are still pending. The Panel also repeatedly requested meetings with Eritrean officials, but as of the time of writing has not received a formal response to these requests. The Panel recommends that investigations into these allegations be continued as the Committee sees fit.

81. Furthermore, it appears that the Security Council's intent to deny arms to what the Council has referred to as "Janjaweed" in its resolutions was circumvented by the fact that many of the tribal militias were already formally part of the Government security organs or were incorporated into them, especially PDF, the

border intelligence guard, the central reserve police, the popular police and the nomadic police.

B. Supply of weapons to opposition groups

Government stockpiles

82. A substantial number of the weapons and stockpiles of ammunition obtained by SLA and JEM were captured from poorly guarded Sudanese army garrisons and police posts, especially in the early stages of the civil war.[19]

83. AU situation reports for the months of July to October 2005 have reported at least six attacks on Government "administrative" convoys by the rebel groups. The main perpetrators of these attacks are reported to be SLA factions. In an interview conducted in November 2005, Minni Minawi claimed that SLA continued to obtain all weapons by attacking Government positions and convoys.

Figure I
SLA modified truck

[19] Some rebel leaders claim that all of their weapons and ammunition are captured from Government forces.

Figure 2
SLA heavy truck with anti-aircraft armament

Figure 3
Government military vehicle

Eritrea

84. Eritrea has long had a hostile relationship with the Sudan, and both countries have hosted, trained and equipped their enemy's respective insurgent groups.[20] The Panel sought to meet with Eritrean officials in Asmara to discuss these accusations, but did not receive a response to requests for meetings.

85. Eritrea hosts large offices for both JEM and SLA and has repeatedly tried to influence the Darfur peace negotiations in N'Djamena and also more recently Abuja.[21] According to independent sources and the Government of the Sudan,

[20] Eritrea also provides support to rebel groups in Ethiopia and has at times provided support to various warlords in Somalia. See, for example, the report of the Panel of Experts on Somalia (S/2003/223).

[21] Minni Arko Minawi, then Secretary-General of SLM/A and now the chairman of a faction of it, lived in Asmara for more than a year before returning to Darfur in mid-2005.

Eritrea has provided arms, logistical support, military training and political support to both JEM and SLA.[22] Training of JEM and SLA occurred at a number of former SPLA camps in Eritrea on the Eritrea-Sudan border in 2003 and 2004. According to the Government of the Sudan, most of the training was conducted at Hamash Koreb on the Eritrean-Sudanese border (the area is forbidden to patrols of the United Nations Mission in Ethiopia and Eritrea).[23]

86. According to the Government of the Sudan, Eritrean Major General Talklay Mangoos organized logistical support for the Darfurian rebels.[24] The information on Eritrean support was corroborated by Mohamed Saleh Hamid "Harba", the former third-in-command of JEM, who admitted to the Panel that JEM was receiving weapons, ammunition and communications equipment from Eritrea and that JEM forces had trained in Eritrea in 2004.[25]

SPLA training and supply of arms and ammunition to SLM/A

87. In 1991 and again in 2001, SPLA had tried to open up another front in Darfur against the central Government, but both times was defeated by a combined force of Government troops and tribal militia recruited from the Arab tribes in southern Darfur.[26]

88. Several years later the Sudan People's Liberation Movement/Army (SPLM/A) was again prepared to support an insurgency in Darfur. SLM/A officials have admitted to the Panel and to independent observers that SPLM/A provided arms and political assistance to SLM.[27]

89. According to a number of sources, flights landed in both Jebel Marra and later, when Jebel Marra came under heavy attack in early 2004, in Dar Zaghawa.[28] Minni Minawi admitted there were as many as 10 SPLA-sponsored flights to Sileah with Adam Bazooka ending around September/October 2004, but stated that most of the weapons were captured by the Government of the Sudan.[29] At least one flight returned later in August or September to Jebel Marra, after Minni Minawi had taken most of the Fur tribe's weapons during SLA infighting between the Zaghawa and the Fur in the summer of 2004.

[22] Information provided by the Sudanese National Intelligence and Security Service, independent sources and a current SPLM member. Minni Minawi has denied these allegations.

[23] Information provided by the Sudanese National Intelligence and Security Service.

[24] Information provided by the Sudanese National Intelligence and Security Service.

[25] Interview conducted in Abeche, Chad, on 9 September 2005. This information was confirmed by a number of other sources consulted by the Panel.

[26] Julie Flint and Alex de Waal, op. cit., p. 83; Gérard Prunier, op. cit., p. 87; and interview with Dave Mozersky, International Crisis Group, 2 December 2005.

[27] Interview with Minni Arko Minawi, Darfur, and confidential interview with SPLM member. A senior SPLM official and former SPLA commander, Malik Agar, now the Minister of Investment in the Government of National Unity, declined to comment when questioned in Khartoum on 18 November 2005 about SPLM/A military assistance.

[28] National Intelligence and Security Service; Julie Flint and Alex de Waal, op. cit., p. 84; and telephone interview with Dave Mozersky, International Crisis Group, 2 December 2005.

[29] Interview with Minni Minawi, Haskanita, Southern Darfur, 15 November 2005.

Libyan Arab Jamahiriya

90. Over the last 40 years Darfur has at various times served as a staging ground for Libyan-sponsored insurgencies (against both Chad and the Sudan) and for insurgencies aimed at the Government of Col. Muammar Al-Qadhafi. There is a large Darfurian (mostly Zaghawa) diaspora living and working in Libya, which allegedly provides funding and other support for the Minni Minawi faction of SLA. The Government of the Libyan Arab Jamahiriya also hosted two large reconciliation gatherings in Tripoli earlier in 2005, of which the latter brokered a truce between JEM and SLM/A. Around that time it is alleged by the opposition groups that rebel leaders received large amounts of money.

91. It is unclear whether official support from the Government of the Libyan Arab Jamahiriya extends beyond involvement in peace negotiations and alleged monetary payments. However, the Panel received information from a number of sources that military equipment and supplies for both SLA and JEM have transited through the Libyan Arab Jamahiriya, and it is believed that they were collected by rebel officers in Al Khufrah before onward shipment to the Sudan.[30]

92. The Panel was able to ascertain from various reliable sources that the Minni Minawi faction of SLA received 35 Land Cruiser vehicles from someone in one of the Libyan security services in July 2005.[31] According to at least one witness and a confidential source, this shipment also included uniforms and ammunition.[32] The Panel also received credible information that Minni Minawi received some 60 Land Cruiser vehicles from Libya at the time of the Haskanita Congress in November 2005.[33] The Panel was not able to ascertain whether this is State-level support. The SLA faction of Minni Minawi denied these charges in an interview.[34]

Chad

93. Chad shares a border of more than 1,000 km with Darfur, and a number of tribes, including the Zaghawa and the Masalit, straddle this border.[35] Idriss Déby, the President of Chad, started his successful insurgency (with Sudanese and Libyan military assistance) from Darfur, and many Sudanese Zaghawa supported his military campaign and remained in the Chadian military. A number of prominent SLA and JEM officers served in the Chadian army.

[30] Confidential information provided to the Panel.

[31] Interview with eyewitness, interview with reliable source and information from Governments.

[32] Interview with SLM/A leader, Abuja, 15 October 2005, and confidential information provided to the Panel.

[33] Interview with international observer, Khartoum, 17 November 2005 and telephone interview with another international observer, 2 December 2005.

[34] Interview with Minni Minawi, Haskanita, Southern Darfur, 5 November 2005.

[35] Although it is a simplification to claim that the war in Darfur is tribal, JEM is dominated by the Kobe Zaghawa (a clan of the Zaghawa who live mostly on the Chad side of the border and are centred on Tine), while SLM/A is largely comprised of Fur, Masalit and Darfurian Zaghawa. Unfortunately, as the war in Darfur has progressed, tribal distinctions have become more salient — even within SLM/A — and the different tribes have coalesced around different leaders within SLM. Thus the Darfurian Zaghawa, and principally the Tuer Zaghawa, have rallied to Minni Minawi and his military commander, Juma Haggar, while the Fur have rallied to Abdul Wahid and the Masalit support Khamis Abdalla, the Deputy Chairman.

94. Both Sudanese and Chadian insurgents regularly travel across the border. While the refugee camps in Chad are not militarized, rebel fighters travel to these camps to visit their families and rest and recuperate.[36]

95. Earlier this year President Déby accused the Sudan of supporting a 3,000-strong rebel force. President Déby charged again on 28 November 2005 that the Sudan continues to provide arms and logistical support to Chadian rebels. On 24 November 2005, the Sudan accused Chad of sending troops across the border (acting against Chadian rebels) and supporting rebels in the war-torn western region of Darfur. Chadian forces have been observed operating deep within Darfurian territory.[37]

96. President Déby has had to walk a fine line between the demands of the Government of the Sudan and his Zaghawa supporters concerned about the plight of their ethnic brethren in Darfur. He has done so by personally supporting some of the Government's policies, but turning a blind eye to support by Chadian security officials to the rebels.[38]

97. The Government of the Sudan and Chad have taken advantage of tensions and strong clan rivalries within JEM to weaken the movement.[39] The first person to split away, in mid-2004, was the former JEM Chief of Staff Jibril Abdel-Karim Bari "Tek" (reportedly formerly a colonel in the Chadian republican guard). The Government of the Sudan has reportedly given NMRD significant financial support through Hassan Abdullah Bargo, a leader in the National Congress Party reportedly responsible for Sudan-Chad relations.[40] This enabled the Government, with Chadian mediation, to quickly secure the security and humanitarian protocols with NMRD in December 2004.[41] According to JEM officials, Chad also provided military support to NMRD.[42] Members of the Panel observed armed supporters of NMRD openly driving around in Tine, Chad, on 11 September, and Jibril Abdel-Karim regularly travels between Darfur and Ogona, Chad, where he apparently stays.[43]

98. In early 2005, the former JEM third-in-command, Mohamed Saleh Hamid "Harba", established the Field Revolutionary Command (FRC), reportedly after encouragement by Chad. Chad later tried, but failed, to insert FRC into the Abuja negotiations as the legitimate JEM. JEM officials claim that Mohamed Saleh received six Land Cruiser vehicles, arms and ammunition from Chad in April

[36] Interviews with refugee workers and Chadian officials, eastern Chad, 9-13 September 2005.

[37] Interviews with international security officials, September and October 2005.

[38] In May 2005, a coup was attempted in N'Djamena, supposedly over army pay, but mostly motivated by disgruntlement over President Idriss Déby's support of the Government of the Sudan in Darfur. Interview with foreign embassy, N'Djamena, 23 November 2005, and Gérard Prunier, op. cit., p. 115.

[39] The JEM leadership is largely drawn from the Kobe Zaghawa, who are mostly based on the Chad side of the Darfur border and thus present a political threat to President Déby.

[40] Confidential information provided to the Panel. These allegations are often reiterated by JEM members.

[41] Confidential information provided to the Panel.

[42] Interview with Tageldin Bashir Nyam Ali, Addis Ababa, 17 August 2005, and Ahmed Togaud, N'Djamena, 23 November 2005. Chadian Government officials denied these allegations. Khallil Abdallah, Political Secretary for NMRD, declined to talk about these allegations during an interview at Tine, Chad, on 12 September 2005.

[43] Interview with refugee worker, Chad, 11 September 2005.

2005.[44] Mohamed Saleh continues to travel between Darfur and Chad, although the Government of Chad claims to have issued a warrant for his arrest (see para. 133 below).

99. The Chadian army is also suffering from a high rate of desertion, both to anti-Déby rebellions and to SLA and JEM.[45] The deserters take their weapons and ammunition with them to Darfur.

Regional illicit arms market

100. Because of the many recent and ongoing conflicts in Africa, there is a thriving regional trade in small arms and light weapons. For example, a used AK-47 assault weapon can reportedly be purchased for 50,000 CFA francs ($100) in Chad.[46] Chadian authorities have complained bitterly about the effects of the proliferation of small arms and light weapons in the region and state that they lack the capacity and resources to combat this problem.[47]

101. In addition to Chad, Birao, Central African Republic, near the border with Southern Darfur, is reportedly a hub for smuggling of arms and stolen cattle from Darfur,[48] and the Panel has received credible information about small-scale smuggling of arms by truck from southern Sudan to Darfur.[49] It is also reported that the Libyan Arab Jamahiriya is a chosen market for stolen cattle and camels from Darfur.

C. Violations by Arab militias

102. It is impossible to characterize Arab militias as one monolithic group. It appears that a large majority of these militias are formally members of Government security organizations, such as the PDF, Border Intelligence Guard, and Central Reserve Police. Other militias may be independent, but still rely on the patronage of Government officials. Because these militias are often recruited by tribal leaders, who are also frequently given formal leadership positions, these groups may pursue dual — possibly conflicting — agendas.

103. Those Arab militias formally in the Government continue to receive ammunition from the Army and other unknown sources, but most likely from sympathetic Government officials as evident by their ability to engage in armed conflict with rebel groups and more troubling, to attack villages.

[44] Interview with Tageldin Bashir Nyam Ali, Addis Ababa, 17 August 2005 and Ahmed Togaud, N'Djamena, 23 November 2005. Chadian Government officials denied these allegations. Mohamed Saleh declined to talk about these allegations during an interview at Abeche, Chad, on 9 September 2005.

[45] Chadian officials complained about the desertions in interviews, but stated there was little they could do to prevent them.(interviews in N'Djamena, 21-23 November 2005).

[46] Interview with Mohamed Saleh "Harba", Abeche, Chad, 9 September 2005.

[47] Interviews with Outouah Yoma Golong, Minister of Public Security, N'Djamena, 22 November 2005; Mohamed Galli Mallah, Secretary-General, Ministry of Public Security, N'Djamena, 23 November 2005; and Governor Mohamed Saleh, Abeche, Chad, 9 September 2005.

[48] Interviews in N'Djamena and Abeche, Chad, September 2005.

[49] Interview with international observer, 7 July 2005.

D. Violations by the Government of the Sudan

104. At the time of writing of this report, the Government of the Sudan has not submitted any request to the Committee for authorization to move weapons, military equipment, ammunition and military materiel into Darfur since 29 March 2005, when the Security Council expanded the arms embargo by resolution 1591 (2005). The Government, however, is well aware of its obligations in this regard, since the Panel has communicated this requirement many times to Government officials in meetings in New York, Khartoum and Darfur.

105. Furthermore, the Government of the Sudan has sought to limit the ability of the Panel to obtain information about violations of the arms embargo by denying the Panel permission to interview any commander under the rank of Brigade Commander/Brigadier,[50] harassing individuals assisting the Panel, and refusing to fully answer questions regarding the transfer of weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts or the disposition of troops in and movement of troops to Darfur (with weapons) since 29 March 2005.

106. The Panel has determined that the Government of the Sudan continues to violate the arms embargo in the following ways.

Movement of arms into Darfur from other parts of the Sudan

107. Redeployment of troops with their weapons from southern Sudan (in fulfilment of the Comprehensive Peace Agreement) into Darfur continues. Senior army officials have told the Panel on different occasions that troops are transferred with only their personal weapons.

108. The western Region Commander of Darfur informed the Panel in November that the redeployment of troops would continue and that it was not his priority to inform the Security Council. He suggested that the Panel (and the Committee) seek other ways of being informed of troop movements into Darfur. Interview with officials in Khartoum indicate the Government is unwilling or unable to abide by the provisions of paragraph 7 of resolution 1591 (2005).

109. The first known transfer of Government battalions from southern Sudan to Darfur occurred in February 2005 (before the imposition of the enhanced arms embargo by the Security Council) and the second between 11 and 16 June 2005. According to Major General Ismat Zain al-Din, Director of Operations of the Sudanese army, this transfer was conducted in compliance with the obligations of the Government of the Sudan under the Comprehensive Peace Agreement, the battalions were formally attached to the Western Region Command (Darfur States), and there was no other place to put the troops.

110. Despite the Panel having communicated to the Government of the Sudan that it is required to notify the Committee of these troop movements, and correspondence dated 29 July 2005 sent by the Chairman of the Committee to the Permanent Mission of the Sudan regarding movements of military equipment into Darfur, the latest transfers of Government troops occurred in November without notification to the Committee. Approximately 700 troops (of various units from the 4th Infantry

[50] Interview with Major General Gaffar Mohammed el-Hassan, Commander, Western Military Region, El-Fasher, 1 November 2005.

Division) moved by air from Ed Damazin and Juba into Darfur, reportedly carrying their personal weapons.

111. Furthermore, the Wali of Western Darfur indicated that he had recently requested an additional 1,000 central reserve police (combat-trained police officers). From mid-October to the end of November 2005, the military and police presence increased noticeably in Darfur. Actual numbers are unknown but it can be confirmed that the central reserve police forces have been and are moving into Darfur.[51]

Arms and ammunition

112. There are noticeably few heavy-weapons platforms (relative to known military holdings of the Government of the Sudan) in the areas visited by the Panel. Only a relatively small number of tanks, armoured personnel carriers, artillery and attack helicopters were observed. It is quite likely that the arms embargo does have a very tangible impact on the deployment of easily observable heavy weapons. The heaviest weapons commonly employed by all parties to the conflict are rocket-propelled grenade launchers, mortars, and heavy machine guns or anti-aircraft artillery mounted on pickup trucks.

113. On 24 September 2005, the Government of the Sudan conducted a show of force in El-Fasher that had a large convoy of Government troops moving around El-Fasher town and then around Abushouk and Dar es Salaam internally displaced persons camps. The convoy was composed of 2 tanks, 35 Land Cruisers and 18 trucks all carrying troops. Some of the vehicles were equipped with mortars, multi-barrelled rocket launchers and 12.5 mm heavy machine guns. The troops were armed with the normal AK 47-style rifles and rocket-propelled grenade launchers.

Deployment of additional attack helicopters

114. The Panel had observed a total of three Sudanese air force Mi-24 attack helicopters in Darfur during its initial visit to Darfur in August 2005. In a subsequent interview with the Commander-in-Chief of the Sudanese air force, General Mohamed Abdul Gadim, and the Director of Operations of the air force, General Ibrahim El Bushra, on 6 September 2005, the Panel was informed that the two attack helicopters based in Nyala had been withdrawn to demonstrate the Government's desire to comply with Security Council resolution 1591 (2005).

115. Subsequently, following the SLA attack on Sheria, Southern Darfur, on 19 and 20 September 2005, at least one, and perhaps two, attack helicopters were reintroduced into Darfur (reportedly redeployed from Khartoum) in violation of paragraph 7 of Security Council resolution 1591 (2005). On 21 September 2005, two Panel members observed a second Mi-24 attack helicopter at El-Fasher airport, Southern Darfur.

[51] Communication from international security officer, Darfur, 2 December 2005.

Figure 4
Mi-24 helicopter of the Government of the Sudan at El-Fasher airport on 21 September 2005 (the aircraft had reportedly touched down 10 minutes earlier)

116. In the subsequent incident associated with Panel members documenting the presumed violation (Sudanese military intelligence agents attempted to forcefully seize the Panel's cameras and detained the Panel members at the airport), the western Region Commander of the armed forces, Major General Gaffar, indicated that the helicopter had "come from Khartoum". Later it transpired that the Government of the Sudan had decided to unilaterally redeploy six Mi-24 "Hind" attack helicopters that it had earlier withdrawn from Darfur to demonstrate compliance with the Security Council arms embargo. At the time of the Panel's last trip to Darfur in November, two Mi-24 helicopters were present at each of the airports in El-Fasher, Geneina and Nyala.

Supply/transfer of spare parts for military helicopters

117. The Panel also collected evidence of the supply of replacement aircraft engines in Darfur for a Sudanese air force Mi-8 transport helicopter based at El-Fasher airport in Northern Darfur. According to the officer in charge of the aircraft, Lt. Jassim Abul Azim, the engines were delivered from Khartoum airbase on 16 September 2005.

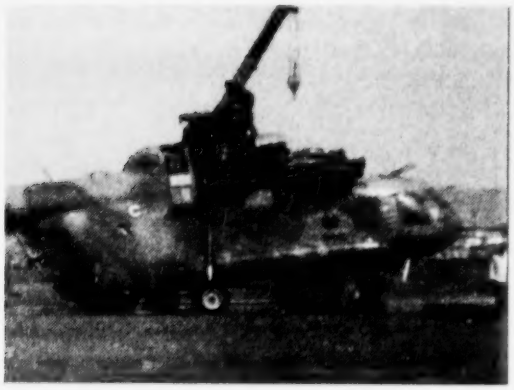

Figure 5
Government Mi-8 helicopter undergoing maintenance/repair, El-Fasher airport, Darfur, 18 September 2005

118. Given the heavy flying schedule — apparently at least several times a week — of the Government helicopters since they were reintroduced to Darfur, it is quite likely that the Government continues to transfer technicians and spare parts to Darfur.

Military vehicles — white vehicles

119. The Panel received information from several sources describing the recent use of white vehicles and white aircraft by the Sudanese armed forces in Darfur. The Panel has been provided with photographic evidence of the use of white vehicles by Government of the Sudan forces (see figure 6 below) and indeed one member of the Panel witnessed a convoy of three white Land Cruiser vehicles, with mounted machine guns, operating in El-Fasher on the morning of 26 November 2005 and another Panel member witnessed a white Land Cruiser with machine-gun mount in Nyala on the evening of 13 November 2005. The African Union has voiced its concern regarding the use of white vehicles to the Government of the Sudan on a number of occasions on the basis that the use of such vehicles could lead to misidentification of AMIS vehicles by parties to the conflict in Darfur. This practice also presents a grave threat to humanitarian agencies, including those of the United Nations system, operating in Darfur.

120. The Panel requested an explanation on this practice from a senior representative of the Sudanese armed forces and was informed that it was not an effort to blur the distinction between AMIS and Government of the Sudan vehicles, but rather that it was simply a matter that the Sudanese Armed Forces has not had an opportunity to paint some newly-arrived vehicles.[52] If the vehicles had indeed recently arrived in Darfur, their movement into Darfur without prior authorization

[52] Meeting with Major General Ismat Zain al-Din, Director of Operations, Sudanese armed forces, Khartoum, 27 November 2005.

by the Committee would constitute a violation of paragraph 7 of Security Council resolution 1591 (2005).

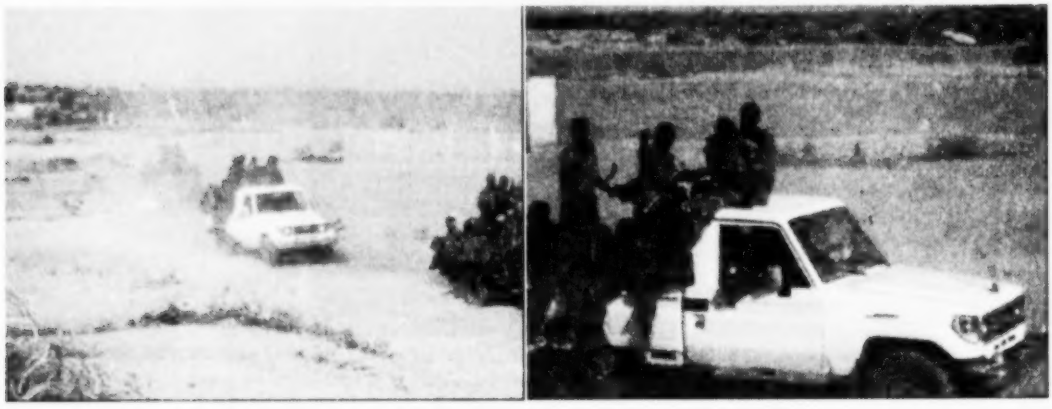

Figure 6
Use of white vehicles by Government of the Sudan armed forces

Movement of military administrative convoys

121. The Government of the Sudan continues to move administrative convoys into Darfur by road and air from other parts of the Sudan.[53] Under the N'Djamena Ceasefire Agreement the Government is obligated to notify the AU Ceasefire Commission of all administrative movements. However, administrative convoys are often only acknowledged when there is an ambush and the Government then reports the attack as a violation of the ceasefire agreement. The African Union has reported that "the Government of the Sudan dispatched many administrative convoys to various locations with belated information to the Ceasefire Commission".[54] Consequently, many of the convoys were reportedly attacked by rebel groups.

122. Although movement of military equipment and supplies within Darfur is not a violation of the arms embargo, the Panel believes that the vast majority of these supplies have to come from outside of Darfur. The Panel does not find credible the Government's claims that pre-29 March 2005 stockpiles of ammunition and other materiel are sufficient to sustain its current military operations.

123. In addition, the African Union has reported suspicious unannounced nighttime aircraft landings and departures at El-Fasher airport and Nyala airport — when the airports are officially closed and inaccessible to AU monitors — and suspicious activities at the airstrip of Tine. During a period of heightened tension in the Tine region, in September 2005, the Government flew at least three Antonov-26 flights suspected to be resupplying ammunition from Geneina to its Tine base. Eyewitness statements noted that — unusually — AU personnel were restricted from the airport while Government soldiers drove military trucks close to the back to offload cargo

[53] The Panel sent a letter to the Government of the Sudan requesting clarification on the movement of convoys into Darfur; a response is still pending.

[54] AU situation report, week 27, 2005.

directly to the trucks. Persons were placed at the side of the air carrier as a barrier to block the sight of any onlooker.[55] Although the contents of the cargo were not verified, the reported behaviour of the Sudanese army personnel seemed very suspicious.

Arms production and procurement of military equipment

Arms

124. Over the last decade, Sudan has significantly increased its ability to produce its own light weapons and ammunition. According to well-informed sources, the Sudanese Military Industrial Corporation continues to operate three military plants near Khartoum that produce ammunition, light infantry weapons, military vehicles and Sudanese versions of the T-55 tank.

125. Shell casings collected from various sites in Darfur suggest that most ammunition currently used by parties to the conflict in Darfur is manufactured either in the Sudan or in China. Bullet casings collected in Kufra, Northern Darfur, included 7.62 x 51 bullets (for G3 assault rifle) and 12.7 x 99 bullets (for heavy machine gun) manufactured in China; those collected in Tawilla, Northern Darfur, included 12.7 x 99 bullets.[56]

Equipment

126. In August, during its investigations, the Panel saw a shipment of green military trucks at Port Sudan. New green trucks of a similar type were also seen on the Sudanese air force premises in Darfur in October. The Panel had begun a process trace in order to verify the end-user and final destination of the vehicles that were seen at Port Sudan. The investigation showed that a total of 222 vehicles (212 military trucks of model EQ2100E6D and 10 chassis workshop of model EQ1093F6D) were procured from Dongfeng Automobile Import and Export Limited in China, makers of military equipment and vehicles. The consignee was the Ministry of Finance and National Economy of the Sudan. Further reports received indicated that the vehicles were consigned on behalf of the Ministry of Defence. A letter seeking clarification of the end-user and the final destination of the vehicles was sent to the consignee. This request for clarification was necessary because the Sudan customs process does not require an end-user statement on the clearance documents. A reply from the Government regarding the end-users of the vehicles is still pending.

E. Observations and recommendations

The arms embargo and travel ban in the context of Sudan's customs and border control regime and capacity

127. In its interim report to the Committee, the Panel voiced its concern over the limitations and the difficulties in monitoring the arms embargo due to the porous nature of the borders surrounding Darfur, both in terms of external borders and

[55] AMIS, weekly summary of situation reports, week 36, 17 September 2005, and interviews with AMIS personnel, Tine, Sudan, 8 November 2005.

[56] Bullet casings on file with the Panel.

internal borders shared with other parts of the Sudan. In this regard, the Panel also made a recommendation to create an inventory that would contain baseline information on supplies that the Government and the rebel groups possess. The Panel would like to expound on that recommendation and present the border-control context for the benefit of the Committee's deliberation.

Movement of military goods and equipment from other parts of the Sudan into Darfur

128. The Sudan customs law states that internal flights are not obligated to submit clearance documents to customs authority and control. Specifically, part V, paragraph 25 (c) of the law states "In general the Air Control Officer will take no cognizance of aircraft flying within the Sudan". Therefore, there are no customs data for the movement of military aircraft within the Sudan. The military airbase is responsible for the movement of its aircraft within Sudan. Adherence to the provisions of the arms embargo is solely left to the commitment of the Ministry of Defence. From the information presented in paragraphs 107-123 above, it is clear that military aircraft and military goods and supplies continue to move from elsewhere in the Sudan into Darfur.

129. As in most countries, the different States and villages in the Sudan are not separated by borders or established checkpoints. Persons, their vehicles and possessions are thus free to move from place to place, for example from Khartoum to Darfur or from Kordafan to Darfur. This highlights another challenge of the present arms embargo, which is imposed only on Darfur: movements into Darfur are unrestricted.

States bordering Darfur

130. During the reporting period, the Panel has observed that the borders surrounding Darfur are very porous. Field visits to Abeche, Adre, Bahia, Tine and near Milliet in the Sudan suggest that there is an almost unrestricted movement of goods and supplies from Libya/Chad/Sudan and also from Chad/Sudan. Before the conflict in 2003, the Milliet customs station was the major trade gate between the Libyan Arab Jamahiriya and the Sudan. That area is now controlled by SLA forces.

131. In this context, the Panel notes that if left uncontrolled, the route from the Libyan Arab Jamahiriya into the Sudan is a prospect for the shipment of arms and military supplies into the Sudan. In interviews with a senior Sudanese customs official, the Panel learned that previous statistics[57] showed that most of those arrested for cattle smuggling were destined for the Libyan Arab Jamahiriya. According to a customs official, the smuggling of camels to the Libyan Arab Jamahiriya from the Sudan is mainly through the west desert also through the area adjacent to the Chadian border. There is a large cross-border smuggling of camels to Libya, estimated to exceed 400,000 head of camels per year, because customs control of the area is very weak or non-existent.[58] It is highly possible that with the route now uncontrolled it may be used for smuggling not only camels but weapons and military supplies.

[57] There are no current statistics on cattle smuggling via this route because of the conflict and the resulting attacks on customs officials on the Milliet path.

[58] Information received from the Deputy Director General of the Sudan Customs Authority, 1 December 2005.

132. The porous nature of the Sudan's borders also poses a challenge to the implementation of the travel ban. The Panel was informed that there is an existing problem of human trafficking from the Sudan into the Libyan Arab Jamahiriya. Data from the Sudan Customs Authority indicated that from 1999 to 2002, approximately 779 persons were arrested while attempting to cross the Darfur border into the Libyan Arab Jamahiriya.[59] The case of Mohamed Saleh Hamid "Harba" also is of importance to note for the travel ban. A warrant was issued in Chad for the arrest of Mohamed Saleh for the part he played in the attack on the AU contingent. However, Saleh remains in Abeché without any seemingly serious attempts by the Government of Chad to arrest him.

133. A member of JEM also told the Panel that it is very easy for Darfurian Zaghawa to obtain Chadian passports with a small bribe.[60]

Recommendations to strengthen the arms embargo within the context of the present territorial challenges

134. In light of the flagrant violations of the arms embargo by all parties involved, the Panel recommends that the arms embargo be strengthened. Listed below are several ways in which the arms embargo could be strengthened in the light of its present territorial scope.

Recommendation A
Inventory of arms and ammunition

135. In its interim report to the Committee, the Panel recommended the development of an arms inventory as a way to assist in monitoring the implementation of the arms embargo. Under the Ceasefire Commission, there is a verification component which seeks to verify the positions and locations of the parties to the conflict. A verification component for the arms embargo could be added to this process. It is recommended that this measure, if accepted, should be undertaken as expeditiously as possible.

Recommendation B
Modify existing arms embargo

136. The following recommendations are proposed for consideration as distinct or combined options for modifying the existing arms embargo:

- Retain the present arms embargo and complement it with the installation of a verification/inventory component (see para. 127 above). This could be monitored periodically by designated inspectors to ensure compliance. United Nations or African Union personnel should conduct periodic and random checks of the parties' supplies to ensure that no new weapons are brought into the Darfur States without the knowledge of the United Nations and/or the African Union.
- Extend the arms embargo to include the entire territory of the Sudan.

[59] Information received from the Deputy Director-General of the Sudan Customs Authority, 1 December 2005.

[60] Interview, Bole airport, Ethiopia, 21 November 2005.

- Extend the arms embargo to the entire territory of the Sudan and include appropriate exemptions for the Government of Southern Sudan and the Government of the Sudan.

137. Depending on the scope of the selected method, the following key locations and entry points within the Sudan are worthy of note:

- Giad Automotive — Among other things, Giad functions as a customs and excise warehouse,[61] which assembles motor vehicles including light and heavy army vehicles and tanks for the Government.
- Port Sudan — This is the main seaport of entry for all types of imports into the Sudan.
- Ammunition factories in the Sudan — The Sudan makes ammunition that is used to supply both its formal forces and members of the Arab militias.
- Rebel strongholds/liberated areas — There is some confusion regarding the official rebel strongholds. This should be clarified in order to promote transparency in the peace process and also verification.
- Chad/Libyan Arab Jamahiriya/Sudan border — This triangular area in Northern Darfur is a prime area for unrestricted movements of persons and their possessions (as is the Chad/Central African Republic/Uganda/Sudan border area in Southern Darfur).

VI. Monitoring implementation of targeted financial and travel-related sanctions

A. Targeted financial sanctions

138. Paragraph 3 (e) of Security Council resolution 1591 (2005) provides for the implementation by Member States of financial sanctions against persons designated by the Committee in accordance with paragraph 3 (c) of the same resolution. At the time of writing of the present report, the Committee had not yet designated any individual to be subject to the financial sanctions. The Panel was therefore unable to monitor the implementation by Member States of the measures contained in paragraphs 3 (e) and 3 (c) of the resolution.

B. Travel ban

139. As noted above, no individuals have yet been designated by the Committee, so at this time the travel restrictions cannot be implemented. Should designation occur, however, the travel ban imposed by resolution 1591 (2005) remains to be implemented by Member States. It is worth noting that the porous nature of the Sudan's borders would require collaborative initiatives among its neighbours, especially those with access to the Interpol I24/7 system for effective implementation of travel restrictions. This area will be further explored in the course of the Panel's mandate.

[61] Duties are only paid on goods that are sold

C. Observations and recommendations

140. Notwithstanding the absence of a list of designated individuals against whom the financial sanctions and the travel ban are to be effected, the Panel sought to ascertain the adequacy of existing legal systems and institutional frameworks of the countries it visited in the region to implement the financial and travel-related sanctions. The Panel was informed of institutional weaknesses which might hinder the implementation of the sanctions, particularly the travel ban. One aspect of these weaknesses relates to the inadequacy of border controls and the porousness of the border between the Darfur region and neighbouring countries. These weaknesses will have a significant impact on the effectiveness of the sanctions, particularly as they relate to individuals who move with relative ease between the Darfur region and neighbouring countries. Notwithstanding this, the Committee should consider designating individuals against whom the targeted financial sanctions and travel ban will be applied.

VII. Individuals who impede the peace process, commit violations of international law or are responsible for offensive military overflights

A. Overview

141. The Panel is identified in paragraph 3 of Security Council resolution 1591 (2005) as a source of information to the Committee on individuals who (a) impede the peace process; (b) constitute a threat to stability in Darfur and the region; (c) commit violations of international humanitarian or human rights law or other atrocities; (d) violate the arms embargo; or (e) are responsible for offensive military overflights. This section presents the findings and recommendations of the Panel for four of these thematic areas. The fifth area, information on individuals who violate the arms embargo, is dealt with in section V above.

142. Information on individuals identified by the Panel under each of these five areas is included in the confidential annex to this report.

B. Individuals who impede the peace process or constitute a threat to stability

Criteria for acts that impede the peace process

143. To assist in providing information to the Committee on individuals who impede the peace process or constitute a threat to stability in Darfur and the region, the Panel developed a set of criteria defining actions or omissions that may constitute such impediments to the peace process or threats to stability. These criteria are drawn as much as possible from existing undertakings and commitments of parties to the conflict in Darfur.

144. The nine categories of acts considered by the Panel to constitute impediments to the peace process are presented in table 1. In the process of developing these criteria the Panel consulted with a broad range of interlocutors, and in particular with representatives of the African Union, including Salim Ahmed Salim, AU chief

mediator for the Abuja talks, and his team.[62] This section presents information on individuals who impede the peace process, presented in the nine categories identified by the Panel.

Table 1
Categories of acts or omissions that constitute impediments to the peace process or threats to stability in Darfur and the region

Category I	A.	Consistent, wilful and systematic violations of the N'Djamena Humanitarian Ceasefire Agreement of 8 April 2004, including failure to:
		• Refrain from any recruitment operations.
		• Refrain from any military action, and any reconnaissance operations.
		• Disengage and refrain from any deployment, movement or action which could extend the territory under its control or which could lead to a resumption of hostilities.
		• Stop laying landmines; mark and sign post any danger areas or minefields.
		• Refrain from supplying or acquiring arms and ammunition.
		• Refrain from any act of violence against or any other abuse of civilian populations.
		• Stop any act of sabotage.
		• Stop any restriction on the movement of goods and people.
		• Stop any form of hostile act, including hostile propaganda.
		• Ensure humanitarian access.
		• Refrain from any military activity which, in the opinion of the Ceasefire Commission or the Joint Commission, could endanger the ceasefire.
	B.	Failure of belligerents other than parties to the N'Djamena Ceasefire Agreement operating in Darfur, such as militia groups, to cease hostilities and to desist from acts such as those identified in article 2 of the Agreement.
Category II		Failure of the Government of the Sudan, SLM/A and JEM to abide by the provisions of the Protocol on the Enhancement of the Security Situation in Darfur of 9 November 2004.

[62] The Panel met with Salim Ahmed Salim in Abuja on 17 October 2005.

Category III	Failure of the Government of the Sudan to identify, neutralize and disarm armed militia groups, in line with its commitments and obligations under the Protocol on the Enhancement of the Security Situation in Darfur, relevant Security Council resolutions, especially resolution 1556 (2004) (para. 6), and the joint communiqué issued by the Government of the Sudan and the Secretary-General on 3 July 2004.
Category IV	Actions intended to exacerbate tensions between ethnic, tribal, political and other groups in Darfur.
Category V	Provision of support (financial, military, logistical, other) to militia groups and other parties that are engaging in ongoing hostilities.
Category VI	Hostile acts committed against AMIS troops, civilian police or AU Ceasefire Commission personnel; other acts intended to impede or frustrate AMIS operations in pursuit of its mandate.
Category VII	Failure of parties to the conflict in Darfur to enforce accountability among combatants or other persons under their control for violations of international humanitarian and human rights law.
Category VIII	Failure by the Government of the Sudan and other States to fully implement Security Council resolutions concerning the situation in Darfur.
Category IX	Acts that impede or constrain the process of conducting peace negotiations, including divisions and power struggles within the various parties to the peace process that unduly delay or frustrate the negotiations.

Categories I and II
Conduct of hostilities and violations of the N'Djamena Ceasefire Agreement and associated protocols

145. There has been consistent, wilful and systematic violation of the N'Djamena Ceasefire Agreement since 29 March 2005 (the beginning of the period of interest to the Panel) by all parties to the Agreement, but predominantly by the Government of the Sudan and SLM/A. The African Union has recorded 68 instances of alleged ceasefire violations during the period from 29 March to 18 November 2005.[63] The types of violations have included, among other acts, recruitment operations; military action and reconnaissance operations (examples of which are provided in the case studies below); violence and abuses against the civilian population; restrictions on the movement of goods and personnel; and failure to ensure humanitarian access.

146. The frequency and intensity of violations of the N'Djamena Ceasefire Agreement highlights the unwillingness of the parties to fully abide by the provisions of the Agreement; the inability of AMIS to pose a credible deterrent and proactive monitoring capability by nature of its resource and personnel limitations; and the relative impunity with which serious violations of the Agreement are viewed. This perceived impunity has contributed to recent attacks against AMIS

[63] Information provided to the Panel by the AU Ceasefire Commission, AMIS force headquarters, El-Fasher, Sudan, November 2005.

personnel and the imposition of other constraints on the work of AMIS (see category VI below).

147. The Government of the Sudan, SLA and JEM have failed to provide prompt and adequate notice of all administrative and other convoys to the AU Ceasefire Commission as required by the N'Djamena Agreement. During the period from 11 March to 10 November 2005, the Ceasefire Commission received 49 notifications of movements, all but one of which were notified by the Government of the Sudan (the remaining notification was submitted by SLA).[64] Notwithstanding the fact that notifications by the Government of the Sudan constitute the vast majority of all notifications submitted, the Government of the Sudan appears to undertake significantly more movements than SLA or JEM, and many of those movements are not notified to the Ceasefire Commission.

148. The Panel received information from eyewitnesses on the movement of many military convoys by the Government of the Sudan that were not notified to the AU Ceasefire Commission by the Government. For example, on 29 September 2005 a Government convoy comprising 41 large trucks and 9 Land Cruiser vehicles stopped at the village of Tawilla in Northern Darfur en route from El-Fasher to Kabkabiya; the convoy had not been notified to the African Union.[65] Elements of the convoy and Government police forces based at Tawilla subsequently undertook a coordinated attack on Tawilla village during which at least four people were killed and several injured. This incident is described in more detail in a case study in section D below.

149. Armed militia groups that are not parties to the N'Djamena Agreement, including militia groups raised by certain tribes in Darfur, continue to engage in acts of hostility and, for some groups, banditry in all three States of Darfur. In a number of cases the armed militia groups have carried out attacks in coordination with elements of the Sudanese armed forces, generally members of PDF or members of the border intelligence guard. In Western Darfur several distinct militia groups have engaged in banditry and also in harassment of humanitarian convoys and personnel. The Panel, from its field investigations, interviews and multiple converging, independent sources of information, has identified a number of individuals who continue to support or direct the militia groups in Darfur, and are responsible for acts of banditry (for the latter, particularly in Western Darfur).

Category III
Failure by the Government of the Sudan to identify, neutralize or disarm the militia groups

150. The Government of the Sudan has abjectly failed to fulfil its commitments to identify, neutralize and disarm militia groups outside the formal State security forces under its influence or control, as demanded by the Security Council in paragraph 6 of its resolution 1556 (2004). Moreover, this unwillingness on the part of the Government to disarm the militia groups represents a failure to deliver on the commitments undertaken by the Government in the joint communiqué issued by the Government of the Sudan and the Secretary-General on 3 July 2004.

[64] Information provided to the Panel by the AU Ceasefire Commission, AMIS force headquarters, El-Fasher, Sudan, November 2005.

[65] The Panel confirmed this by reviewing the log of all notifications of movements to the AU Ceasefire Commission for the period March to November 2005.

151. The Panel requested information — in written requests and during interviews — from Sudanese armed forces, the National Intelligence and Security Service, the Ministry of the Interior and other Government entities on actions taken or planned to identify, neutralize and disarm militia groups operating in Darfur.[66] The Panel found no evidence of a serious effort on the part of the Government to disarm the militia groups. On the contrary, the Panel has gathered a substantial body of evidence to demonstrate that the Government of the Sudan continues to provide logistical and operational support to some militia groups and has engaged in coordinated military actions with militia groups in various areas of Darfur. For example, the Panel gathered evidence of a coordinated attack undertaken by Government forces and militia groups in the area of Tawilla and Tabit, Northern Darfur, during September 2005 (described in a case study in section D below).

152. The Panel has identified a number of individuals within the Government of the Sudan who have by their inaction or insufficient action failed to disarm the militia groups. The names of these individuals are included in the confidential annex to this report.

Category IV
Exacerbating tensions between ethnic/tribal and other groups in Darfur

153. In the course of its work the Panel has built up an image — based on interviews, field research and information provided by interlocutors — of the exploitation and exacerbation of tensions between various tribal groups in Darfur. For example, the Panel heard evidence of SLM/A interference in previously stable tribal relations with a view to mobilizing support against Arab tribes.[67] In addition, the Government of the Sudan has supported tribes against the tribal grass-roots of SLM/A (Fur and Zhagawa tribes).

Category V
Provision of support to groups engaged in ongoing hostilities

154. Besides representing a potential violation of the arms embargo imposed by the Security Council in resolutions 1556 (2004) and 1591 (2005), the provision of military equipment, supplies, financial support for such supplies or logistical support to parties to the conflict in Darfur constitutes an impediment to the peace process. Individuals and entities identified in section V above as having committed violations of the arms embargo are also considered to be individuals who are impeding the peace process.

Category VI
Impeding the mission and operations of AMIS

155. The Panel identified and investigated a number of hostile and other acts perpetrated against AMIS personnel, including AU Ceasefire Commission military observers, AU civilian police and AMIS protection force personnel, that have

[66] The Panel requested this information in a letter to the Director of Operations of the Sudanese armed forces dated 14 November 2005, and in interviews with the Director of the National Intelligence and Security Service, Salah Abdalla (Gosh) (Khartoum, 27 November 2005), and representatives of the Ministry of the Interior (interviews in Khartoum, September and December 2005).

[67] Information gathered from interviews with tribal leaders in Darfur, October-November 2005.

impeded the mission and work of AMIS and the Ceasefire Commission and thus constitute serious impediments to the peace process.

Abduction and killing of AMIS personnel

156. On the morning of 9 October 2005 an AMIS patrol was halted by an armed group near the village of Nana in Western Darfur and two AMIS personnel were abducted. Later that same afternoon, in a related incident, the AU recovery party, with the remaining members of the first AMIS patrol, was intercepted by another armed group and 37 AMIS personnel were abducted.[68]

157. AU investigations into the abductions have determined that those responsible for the first incident were members of the breakaway rebel group under the control of Mohamed Saleh Hamid "Harba", formerly with JEM. This group is variously referred to as the Field Revolutionary Command or Revolutionary Field Command. The second incident involved members of the NMRD armed group under the control of "Colonel" Gibril Abdel-Karim Bari, who orchestrated and participated in the second incident.

158. The Panel conducted its own independent interviews and investigations into these two incidents and determined that a sufficient and substantial body of evidence exists, including eyewitness testimony, to conclude that armed groups under the control of Mohamed Saleh and Colonel Gibril Abdel-Karim Bari were responsible for abducting and detaining the AMIS personnel and for taking their equipment.[69]

159. Furthermore, the Panel held a meeting with Mohamed Saleh prior to these incidents (in September 2005), during which he indicated that if he and his supporters were not given a voice in the Abuja process, their group would return to conflict.[70]

160. In a separate incident between Menawashi and Khor Abeche, Southern Darfur, on 8 October 2005, two civilian truck drivers (AMIS contractors) and four AMIS protection force members were killed, and four more AMIS protection force members were wounded in action by armed attackers. Preliminary African Union investigations into this incident concluded that the attackers were most likely "armed Arab nomads".[71] The Panel has heard differing hypotheses suggesting the attackers were either members of an armed militia from an Arab tribe, were members of SLA, or were opportunistic bandits operating in an area known for its insecurity because of acts of banditry.

161. The findings of AU preliminary investigations, and investigations and interviews conducted by the Panel provide insufficient evidence to conclusively identify the perpetrators. One eyewitness account, by a member of the protection force, which identified the attackers as members of SLA appears to the Panel to have several serious inconsistencies. Assertions based on clothing and weapons that the attackers were members of SLA depend, in the view of the Panel, on broad

[68] During the second incident the abductees consisted of 13 military observers, 5 civilian police and 19 protection force personnel. This information was gathered from a review of AU reports on the incident and primary interviews with AMIS personnel involved in the incident.

[69] Interviews conducted in Tine, Sudan, 8 November 2005.

[70] Interview with Mohamed Saleh, Abeche, Chad, 9 September 2005.

[71] *Source*: AU reports, October 2005.

assumptions regarding the clothing/uniforms etc. of different combatants. This information alone is insufficient to confirm the identity of the attackers. The African Union has indicated that it intends to investigate this incident further.

Use of white vehicles by Sudanese armed forces

162. As stated in paragraphs 119 and 120 above, the use of white vehicles and white aircraft, in a deliberate attempt to reduce the distinction between AU/AMIS or United Nations vehicles and those of parties to the conflict, represents an impediment to the freedom of movement and safety of AU/AMIS and United Nations personnel, and hence constitutes an impediment to the peace process.

Categories VII and VIII
Failure to enforce accountability or to fully implement Security Council resolutions on Darfur

163. All parties to the N'Djamena Ceasefire Agreement and other belligerents operating in Darfur, especially the non-State militia groups, have failed to enforce accountability among combatants or other persons under their control for violations of international humanitarian and human rights law. Notwithstanding action taken at the central level in Khartoum to enforce accountability for acts committed by members of the Sudanese armed forces, there remains unwillingness on the part of the Government of the Sudan to hold to account those who have committed violations of international humanitarian and human rights law.

164. Similarly, SLA and JEM have failed to ensure (a) that their members act within the rules and norms of conduct during armed conflict; and (b) that members of the respective groups are held accountable for actions that constitute violations of international humanitarian and human rights law. For example, SLA Field Commander Salah Bob is believed to have been responsible for the killing of two Save the Children UK workers on 12 December 2004. The workers were attacked while travelling in a clearly marked convoy on the main road between Mershing and Duma in Southern Darfur. Salah Bob was also involved in the detention of two British nationals working for the British Charity Kids-4-Kids together with two national staff from their partner international non-governmental organization north-west of El-Fasher on 19 February 2005. As far as the Panel has been able to determine, Salah Bob has not been held accountable for these actions.

Category IX
Impeding the process of peace negotiations

165. The Panel has followed closely the changes within the structure of SLM/A since June/July 2005. Of particular interest to the Panel has been the impact of the leadership struggle within the Movement — essentially between Abdul Wahid Mohamed al-Nur and Minni Arko Minawi — on the ability of the Movement to participate effectively in, and advance, the Abuja process. The sixth round of talks in Abuja (late September to mid-October 2005) was constrained by the uncertainties associated with multiple delegations representing SLM/A. To the extent that divisions within the parties to the Abuja talks delay or frustrate the process of negotiations, such divisions constitute an impediment to the peace process. For example, early in November 2005, Minni Arko Minawi arrested Suleiman Marajan, a high-ranking SLA field commander, who attended peace negotiations in Abuja

against Minni Minawi's wishes. Minni Arko Minawi had dispatched forces to prevent Suleiman Marajan from attending the peace negotiations. Although they failed to capture Suleiman Marajan, Minni Minawi's troops fought with his bodyguards, killing five, and subsequently abducted three members of his Meidop tribe.[72]

C. Violations of international humanitarian and human rights law

Approach and methodology

166. The Panel gathered and analysed a substantial body of information pertaining to actions that may constitute violations of international humanitarian and human rights law in Darfur during the course of its mandate. The temporal scope of this substantive task area was for the period commencing 29 March 2005, requiring the Panel to focus primarily on possible violations of international humanitarian and human rights law that occurred after that date.[73]

167. The Panel adopted a technical, fact-finding approach to the provision of information on violations of international humanitarian and human rights law. The approach of the Panel was to determine whether acts of certain individuals or entities constituted violations of international humanitarian or human rights law in the form of acts or omissions that contravene the applicable rules and norms. The evidentiary standard applied by the Panel was to identify individuals who could reasonably be considered — on the basis of facts established by the Panel, a substantial body of information and evidence, and consideration of the facts "on the balance of probabilities" — to have committed acts that might constitute violations of international humanitarian and human rights law.

168. The facts presented here, as established by the Panel, cannot therefore be used as the sole basis for determining criminal responsibility but could be used by a competent court or investigative body to further its own investigations of violations of international humanitarian and human rights law in Darfur. The Panel has decided to provide the names of individuals identified by the Panel as having committed acts that may constitute violations of international humanitarian and human rights law in the confidential annex to this report.

169. In addition to the methodological elements described in section IV above, the provision of information on violations of international humanitarian and human rights law follows a two-level approach. First, information is provided on the "macroscopic" situation of violations of international humanitarian and human rights law (the nature, scope and intensity of violations); second, information is provided on specific incidents or actions that the Panel has determined constitute violations of international humanitarian and human rights law using a case-study approach.

[72] Amnesty International, "Sudan: prominent Darfur rebel feared at risk of execution", 9 November 2005, and interviews with members of SLM, Abuja, October 2005.

[73] The Panel sought clarification from the Committee on the temporal scope of investigation for this area of the Panel's mandate at a meeting of the Committee on 19 July 2005. The Committee members indicated that the Panel should focus on violations occurring from the date of adoption of resolution 1591 (2005) onwards.

170. In the light of the broad spectrum and intensity of potential violations of international humanitarian and human rights law in Darfur, and given the time, personnel and other constraints experienced by the Panel (see section D below), this section provides preliminary information on only a very small number of potential violations. A more extensive investigation and reporting capability would be required to investigate the broad range of ongoing violations in Darfur.

International humanitarian and human rights law and the situation in Darfur

171. Assessment of whether the facts established by the Panel may constitute violations of international humanitarian and human rights law requires first and foremost identification of the rules, provisions and norms of international humanitarian and human rights law applicable to the situation in Darfur, and how these rules and norms apply to the various parties involved in the conflict.

172. While international humanitarian law applies only to situations of international or non-international armed conflict, international human rights law applies in times of conflict and in times of peace. Moreover, whereas the legal obligations to safeguard and fulfil human rights rest primarily with the States parties to the various international human rights treaties, the human rights themselves are rights of individuals. The conflict in Darfur is considered for the purposes of international humanitarian law to be a non-international armed conflict.

173. The fundamental principles underlying international humanitarian law are the principles of humanity, distinction, proportionality, military imperative, and adequate precaution. The Sudan is a signatory to the four Geneva Conventions of 12 August 1949, but not to the Additional Protocols (1977) thereto. All parties to the conflict in Darfur are bound by the provisions of the Geneva Conventions that regulate the means and methods of warfare in situations of non-international armed conflict, specifically article 3 common to the four Geneva Conventions of 1949.

174. In addition to the provisions of treaty-based international humanitarian law, all parties to the conflict in Darfur are bound by the norms of customary international humanitarian law.[74] Under treaty-based and customary international humanitarian law, acts that are prohibited in situations of non-international armed conflict include, but are not limited to:

- Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture of persons who are not, or are no longer, taking part in the hostilities.
- The taking of hostages.
- Outrages upon personal dignity, in particular humiliating and degrading treatment of persons who are not, or are no longer, taking part in the hostilities.

[74] In March 2005, the International Committee of the Red Cross published a study of customary international humanitarian law which aims to overcome some of the challenges associated with the application of treaty-based international humanitarian law. The study identifies 161 rules of customary international humanitarian law clustered in six subject areas. The rules identified in the study are listed as an annex in Jean-Marie Henckaerts "Study on customary international humanitarian law: a contribution to the understanding and respect for the rule of law in armed conflict"; *International Review of the Red Cross*, No. 857 (March 2005).

- The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court.
- Attacks directed against civilians or civilian objects.
- Indiscriminate attacks.
- Attacks expected to cause incidental loss of civilian life, injury to civilians, and/or damage to civilian objects which would be excessive in relation to the concrete and direct anticipated military advantage.
- Rape and other forms of sexual violence.

175. The Government of the Sudan has entered into several international human rights treaties that collectively frame the duties and obligations of the Government vis-à-vis the human rights of individuals in the Sudan. Those international treaties include the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, as well as the Optional Protocols thereto on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

176. States parties to those treaties are obligated to safeguard and fulfil, to the fullest extent in view of available resources, the rights specified in the various treaties. In certain limited, exceptional circumstances, for example, in a state of public emergency, States parties to some of the human rights treaties may derogate from certain civil and political rights. However, there are certain rights that are non-derogable, that is, can never be suspended. The International Covenant on Civil and Political Rights provides that the following rights may never be derogated from:

- Right to life (article 6).
- Prohibition of torture and cruel, inhuman or degrading treatment or punishment (article 7).
- Prohibition of slavery (article 8, paras. 1 and 2).
- Prohibition of imprisonment because of inability to fulfil a contractual obligation (article 11).
- Prohibition of retroactive application of criminal law (article 15).
- Right to recognition as a person before the law (article 16).
- Freedom of thought, conscience and religion (article 18).

D. Findings: violations of international humanitarian law in Darfur

177. The process of identifying individuals who commit acts that may constitute violations of international humanitarian law in Darfur requires two sequential steps, namely, (a) an assessment of whether particular acts may constitute violations of international humanitarian law under the applicable legal regime, and (b) identification of those who commit or are responsible for those acts.

Pattern and nature of violations of international humanitarian law

178. Previous international and national investigations have concluded that all parties to the conflict in Darfur (the Government of the Sudan, rebel movements and armed militia groups) have committed gross violations of international humanitarian and human rights law since the beginning of the current phase of the conflict (February 2003). For example, the National Commission of Inquiry established in May 2004 by the Government of the Sudan found that serious violations of human rights had occurred in Darfur involving all the belligerent parties (see S/2005/80).

179. The International Commission of Inquiry on Darfur concluded in its report to the Secretary-General (S/2005/60) in January 2005 that:

> the Government of the Sudan and the Janjaweed are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law.

The International Commission of Inquiry found also credible evidence that

> rebel forces, namely members of SLA and JEM, also are responsible for serious violations of international human rights and humanitarian law which may amount to war crimes.

180. The Panel found evidence of widespread violations of international humanitarian law in Darfur during the period from 29 March to 5 December 2005. The parties to the N'Djamena Ceasefire Agreement and other belligerents operating in Darfur, in particular the non-State militia groups, have undertaken military operations with scant regard for the principles of distinction, proportionality or military imperative in many cases. While all parties (SLA, JEM, the Government of the Sudan and militia groups) have violated the rules and norms of armed conflict, SLA, the Government and the militia groups have shown the least regard for the welfare of civilians.

181. The Government of the Sudan and militia groups have separately, and on some occasions acting in coordination, perpetrated indiscriminate attacks against civilians; intentionally targeted civilians and civilian objects; have failed to take appropriate measures to distinguish between civilians and combatants and between civilian and military objects; have destroyed civilian property; and have engaged in rape and other forms of sexual violence. Moreover, the Government of the Sudan has on several occasions used force disproportionate to the military objectives. SLA and JEM have similarly engaged in the acts mentioned above and SLA has also, on at least one occasion identified by the Panel, killed detained combatants.

182. All parties, to varying degrees, have committed torture, outrages upon personal dignity and cruel, inhumane or degrading treatment against those who are not, or are no longer, participating in the conflict. Examples include cruel and inhumane treatment of civilians by armed militia groups during attacks on Tawilla (29 September 2005); and cruel and inhumane treatment of detained enemy forces by SLA in Sheiria (around 19 September 2005).

183. The Panel has gathered information on the recruitment and use of child soldiers by SLM/A and JEM. The faction of SLA under the control of Abdul Wahid in particular (based in the Jebel Marra area) has allegedly used a significant number of child soldiers. However, in October 2005, UNICEF reported that a total of 513 child soldiers had been removed from the fighting forces of SLA (in the Jebel Marra

area) by that date.[75] The use of children under the age of 15 in armed hostilities runs counter to international customary norms, and also constitutes a violation of the provisions of the Protocol on the Enhancement of the Security Situation in Darfur, signed by parties to the N'Djamena Ceasefire Agreement.

184. In addition, two Panel members observed teenagers among SLA forces in Southern Darfur during September/October 2005. The Panel was, however, unable to establish the age of the children at that time.

Case studies

185. The Panel performed case study analyses for eight separate incidents and attacks that occurred in Darfur during the period under investigation. The case studies presented here provide examples of the types of acts committed by the parties to the conflict that may constitute violations of international humanitarian and human rights law. The location and dates of the incidents or attacks investigated are shown in table 2. For all case studies, the Panel drew on existing incident reports (AU, other), primary interviews (wherever possible) and its own field investigations. The case study findings are presented here without prejudice to findings or results of investigations by other competent bodies.

Table 2
Case studies on significant incidents or attacks considered by the Panel

Case number	*Location*	*Date (2005)*
1	Khor Abeche, Southern Darfur	7 April
2	Shangil Tobayi and Abu Hamra, Northern Darfur	23 and 24 July
3	Al-Malam, Southern Darfur	23 August
4	Villages in Tawilla/Tabit/Tarny North triangle, Northern Darfur	18 and 19 September
5	Sheiria, Southern Darfur	19 September
6	Aro Sharow, Western Darfur	28 September
7	Tawilla, Northern Darfur	29 September
8	Tama, Southern Darfur	23 October

Case study 1
Khor Abeche, Southern Darfur, 7 April 2005

186. This case study summarizes the events that occurred in and around the village of Khor Abeche, Southern Darfur, on 7 April 2005. The Panel undertook a site visit to Khor Abeche during November 2005 and conducted interviews in the area of Khor Abeche, in Nyala and in Khartoum to establish a factual basis for its findings.

[75] *UNICEF Darfur Emergency: August-September 2005 Report* (New York, UNICEF, October 2005), p. 13.

Description of events

187. On 7 April 2005, starting at approximately 0800 hours, an armed group consisting of an estimated 200 members of the Miseriya tribe from Nitega (Southern Darfur) conducted an attack on the nearby village of Khor Abeche which resulted in the killing of at least four people, several people injured and the destruction of many of the houses in the village.[76] The armed militia attacked the village on horses and camels, and looted supplies in the marketplace. On the day of the attack, the African Union established that 15 people were missing from the village. It has not been possible to determine how many of those individuals have since been accounted for or located.

188. The attack on 7 April marked the culmination of a number of incidents involving the tribes and associated militia groups in the villages of Khor Abeche and Nitega, some of which occurred in the days immediately prior to the attack under investigation, and some of which occurred in the period stretching back to July 2004. The prior attacks and incidents are important to note as they provide the context within which the attacks on 7 April occurred.

189. Relations between the tribes in Nitega (Miseriya) and Khor Abeche (Bergid) began to deteriorate in July 2004, when there was an increase in the number of attacks by members of SLM/A who had come to settle in Khor Abeche. The presence of SLM/A members in Khor Abeche and their efforts to gather support for their group to counter the actions of Government forces and allied tribal militia groups complicated the traditional dispute resolution processes that had served the tribes well in the past. SLM/A allegedly stole livestock from the village of Nitega on several occasions beginning in July 2004. The day before the attack on 7 April SLM/A members based in Khor Abeche allegedly stole 150 cattle from Nitega and abducted a shepherd.

Discussion and findings

190. Nazir el-Tijani Abdelqader Muhamad Toman is the tribal leader of the Miseriya tribe in Nitega. El-Tijani has previously been identified by the United Nations and the African Union as the tribal leader under whose command the militia group from Nitega attacked Khor Abeche on 7 April 2005.[77] The AU Ceasefire Commission investigation report on the attack on Khor Abeche asserted that Nazir el-Tijani commanded the attack on 7 April and that, moreover, he is "under the control" of the Wali of Southern Darfur.[78]

[76] The Panel has observed that in many cases the number of civilian casualties identified in AU investigation reports is significantly less than the actual number of casualties. This is because AU investigations are normally undertaken immediately or shortly after the incident and in many cases civilians who are reported missing have subsequently been found to have been killed or wounded in the attacks. Several AU investigators pointed out this potential bias for underreporting in the AU investigations.

[77] For example, in a joint press statement issued by the Special Representative of the Secretary-General and the Special Representative of the African Union (and Head of AMIS), Ambassador Baba Gana Kingibe, in April 2005.

[78] African Union Ceasefire Commission, *Ceasefire Violation Report: Alleged Janjaweed Armed Militia Attack of Khor Abeche on 7 April 05* (report No. 66/05, 27 April 2005). Available at: http://www.africa-union.org.

191. The Panel conducted interviews with the Wali of Southern Darfur, senior representatives of the office of the Wali (in Nyala), the African Union, El-Tijani and other interlocutors. The office of the Wali in Southern Darfur indicated that El-Tijani is "under the control of the authorities" and that, in relation to the attack of 7 April, he had taken the right measures to defend his people against the attacks of rebel forces.[79]

192. Nazir el-Tijani stated to the Panel that men in the village of Nitega undertook the 7 April attack on Khor Abeche against his orders, that he did not participate in the attack, and that the Government of the Sudan had no forces — regular armed forces or PDF — operating in the area of Nitega.[80] This assertion was contradicted by the statements of a representative of the office of the Wali in Nyala, who asserted that PDF do operate in the area, that the Government of the Sudan has trained members of the Miseriya tribe in Nitega because of the current crisis, and that PDF and members of the tribal militia under El-Tijani operate together. PDF elements have also been observed to operate alongside the militia group from Nitega.

193. The Office of the Prosecutor in Nyala indicated to the Panel that there were no suspects in the case concerning the attack on Khor Abeche on 7 April.[81] Moreover, the Chief Prosecutor confirmed that, notwithstanding the provision of national legislation in the Sudan permitting prosecutors to request that the police carry out an investigation in the absence of a criminal complaint, the Office of the Prosecutor would not request an investigation in the absence of a complaint submitted to the police.

194. The findings of the Panel may be summarized as follows:

- The attack on Khor Abeche village on 7 April 2005 was undertaken by an organized, armed militia group comprising members of the Miseriya tribe in Nitega.
- The attack resulted in killing of and injury to civilians, and extensive damage to, destruction of and looting of civilian property — acts that constitute violations of international humanitarian law.
- Nazir el-Tijani apparently did not participate directly in the attacks and maintains that "his" men (armed men under his control) attacked Khor Abeche against his orders. The assertion that armed men from Nitega acted contrary to the orders of El-Tijani is contradicted by other accounts of the attack and the events preceding the attack related to the Panel.
- Although Nazir el-Tijani may not have personally participated in the attack, he nonetheless bears partial responsibility for the actions of the armed group under his control (by virtue of command responsibility), as he has frequently asserted that the armed men are "his" men (inferring some degree of authority and control).
- The office of the Wali in Southern Darfur stated to the Panel that (a) PDF elements operate alongside the militia group from the Miseriya tribe in Nitega; and (b) in the view of the authorities in Southern Darfur, Nazir el-Tijani took appropriate measures to protect his people.

[79] Interview with a representative of the office of the Wali, Nyala, 21 November 2005.
[80] Interview with Nazir el-Tijani, Khartoum, 29 November 2005.
[81] Interview with a representative of the Office of the Prosecutor, Nyala, 22 November 2005.

Case study 2
Shangil Tobayi and Abu Hamra, Northern Darfur, 23 and 24 July 2005

195. This case study describes three events — an attack by SLA forces on a military contingent of the Government of the Sudan while it was escorting a convoy of civilian trucks on the El-Fasher to Nyala road and two subsequent retaliatory attacks by Government forces. The details of the incidents are derived from both primary and secondary sources and include two field investigation visits to Shangil Tobayi.

Description of events

196. During the morning of 23 July 2005 a Government of the Sudan military contingent escorting a convoy of 15 civilian trucks along the El-Fasher to Nyala road was attacked by a group of armed men, presumed to be SLA soldiers. The Government military officer in charge of the detachment and two soldiers were killed in the engagement. The SLA soldiers seized the Government military vehicle and some equipment. The civilian truck drivers and their trucks were unharmed and were allowed to continue.

197. This incident prompted the Government of the Sudan Military Command in Nyala to initiate an attack on the area allegedly harbouring the SLA forces. A force from the 16th Infantry Division was deployed for this purpose. At about 0800 hours on 24 July 2005, Government soldiers travelling in 24 Toyota Land Cruiser 4 x 4 vehicles were observed coming from the direction of Al-Malam (a tribal militia stronghold).[82] A militia of armed men accompanied them on camel and horseback. The militia force stopped their advance while the motorized regular military force swept past the village of Abu Hamra, turned and attacked it. The villagers fled to a nearby wadi and hid there. Two Government attack helicopters fired at least one rocket-propelled weapon into the village and surrounding area in support of the attack.[83]

198. The soldiers fired into the village indiscriminately with automatic assault rifles and 12.7-mm machine guns that were mounted on the back of the 4 x 4 military vehicles. Numerous houses were set alight during the shooting, probably by tracer bullets and other munitions.

199. A woman was killed and an unknown number of people, including two children aged 7 and 3 years, were injured in the attack. Houses were destroyed by fire and livestock from the village were herded by the military towards the waiting Arab militia, who seized the animals and drove them towards Al-Malam.[84] SLA forces claim not to have offered any resistance to this attack and claim not to have been present in the village, but the Government forces seized a vehicle and a tractor belonging to SLA that were in the village. A total of 600 villagers were displaced as a result of the attack. The loss of their livestock has also deprived them of a substantial means of sustaining themselves.

200. Later that same day Government soldiers approached Shangil Tobayi on foot. The soldiers separated into two groups forming two battle lines — one group went to the village and the second to the camp of internally displaced persons that is situated there. Both the village and the camp came under direct attack from the

[82] *Source*: AU reports and interview with anonymous witness 1, Shangil Tobayi.
[83] *Source*: AU reports and interview with anonymous witness 1, Shangil Tobayi.
[84] Interview with anonymous witness 1, Shangil Tobayi.

soldiers. The soldiers used automatic assault rifles, machine guns, rocket-propelled grenades and mortars, firing the weapons indiscriminately into both the village and the camp. The attack continued for 40 to 60 minutes before the Government soldiers withdrew. Six people were killed and eight persons were wounded. Houses were set alight and destroyed.

Discussion and findings

201. SLA soldier Ahmed Mohamed Adam confirmed to AU investigators that SLA forces were responsible for the attack on the Government military convoy escort, and that he was a member of the SLA attacking group.[85]

202. Brigadier General Sirelkhatom Usman, Deputy Commander of the 16th Infantry Division, Nyala, confirmed to AU investigators that in response to the attack on the convoy and other apparent ceasefire violations by SLA he had mobilized troops from his command under cover of two Government helicopters to conduct operations against SLA at Abu Hamra. He claimed that the helicopters had not played an offensive role. This is contradicted by witness accounts and the finding of unexploded air munitions on the ground by AU investigators (see sect. F below).

203. Government of the Sudan Military Commander Abdalrahim Abdalrabi at Shangil Tobayi claims that soldiers under his command were responsible for the attack on Shangil Tobayi village and the camp of internally displaced persons and that his soldiers reacted in self-defence when they came under fire.[85] This version is not credible and conflicts with other witness accounts and AU photographic evidence of the attack. Moreover the scale, magnitude and duration of the attack renders a self-defence justification ineffective.

204. It has also been established that SLA has a presence in the area and is under the command of Adam Yacub Shant.

205. The findings of the Panel may be summarized as follows:

- The SLA attack on the Government of the Sudan convoy was unprovoked and a violation of the N'Djamena Ceasefire Agreement. The Panel has identified members of SLA who participated in the attack.
- The attacks on Abu Hamra and Shangil Tobayi were provoked by the attack on the Government military escort, but were not in self-defence. The attacks were indiscriminate attacks on a civilian population, constituting a violation of international humanitarian and human rights law. Furthermore they were in violation of the Ceasefire Agreement.
- Two members of the Sudanese armed forces have been identified as having committed or having been responsible for the Government attacks.

Case study 3
Al-Malam, Southern Darfur, 23 August 2005

206. The brief case study describes an attack in the Al-Malam area on 23 August 2005. This incident is particularly noteworthy because it marked an important milestone in the conflict in Darfur during recent months: after this attack there was a

[85] *Source*: AU reports.

significant increase in the frequency and intensity of engagements or attacks, especially in Northern and Southern Darfur. In particular, there were a number of attacks by militia groups in September and it has been suggested that those attacks were undertaken in part as a reprisal for the Al-Malam attack at the end of August.

Description of events

207. On 23 August 2005, commencing at approximately 1500 hours, a group of armed men from SLA, purportedly based in Turba, attacked a group of Arab nomads in an area north-west of the village of Al-Malam using six vehicles (three smaller vehicles and three trucks). The SLA members employed machine guns and assault rifles in the attack. Upon hearing gunfire from the attack, Government of the Sudan soldiers went to the location of the attack and assisted the Arab nomads in the engagement.

208. At least three civilians were wounded in the attack, seven camels were killed, and an unknown number of camels — reports vary from several hundred to 3,000 camels — were stolen by the attacking SLA forces. Two vehicles used by SLA were captured during the attack.

Discussion and findings

209. The SLA Commander for the Turba sector maintained that the attack was undertaken in reprisal for an attack earlier that day on SLA garrisons in Timotiri and Turba, perpetrated by Government soldiers. This account was questioned by the AU investigation team. Moreover, the number of camels stolen during the attack was apparently inflated by the chief of the Arab nomads in the area of Al-Malam.[85]

210. In interviews with the Panel, senior SLA commanders have asserted that armed nomadic groups based in Al-Malam have on several occasions looted livestock of civilians in areas in which SLA operates. The SLA commanders maintained that SLA participated in tracking the livestock to retrieve them for the civilians.[86]

211. The findings of the Panel may be summarized as follows:

- SLA undertook an attack against Arab nomads in the area of Al-Malam and stole an unknown number of camels. During the engagement between SLA, Arab nomads and Government soldiers, three civilians were wounded. Further investigation is required to establish those responsible for the wounding of civilians during the attack.

Case study 4
Villages in Tarni area, Tawilla district, 18 and 19 September 2005

212. This case study deals with an attack over two days on 31 villages in the Tarni area of the Tawilla district. The attackers were Arab militia supported by Government soldiers in military Land Cruiser vehicles. The details of the incidents are derived from both primary and secondary sources and two visits to Tawilla.

[85] Interviews with SLA commanders including Abdul Hasim and Bahkir Karimo, Abuja, October 2005.

Description of events

213. During the morning of 18 September a force of about 600 Arab militia riding camels and horses, supported by Government of the Sudan soldiers in military Land Cruiser vehicles equipped with 12.7-mm heavy machine guns, arrived from the direction of Al-Malam (a known militia stronghold) and commenced their attack on the villages near the Nasser Mountains. Thereafter the attackers swept through the Tarni area attacking a total of 31 villages over a two-day period.

214. SLA had a presence in this area and its Commander Moussa Adam Abdallah responded to the attack by establishing a defensive line in the Martal Valley. Heavy fighting occurred in the valley between SLA forces and the attackers. Eight SLA soldiers were killed.

215. The attacking force spent the night at Dadi village and at dawn on 19 September 2005 continued attacking other villages in the area. Later in the morning they broke off their attack and moved back to the Nasser Mountains, taking looted property and livestock with them. Thirty-two civilians including women, children and elderly persons were killed during the attacks, 29 people suffered serious injuries and an unknown number of persons sustained minor injuries. Six women were reportedly raped at Dadi but tribal leaders believe that the number of incidents in the villages was higher.

216. Fear of further attacks and the loss of livestock and agricultural implements needed to sustain themselves, coupled with the loss and destruction of their property, prevent people from returning to their homes.

Discussion and findings

217. The African Union has concluded that the attackers were militia groups from the Al-Malam area supported by Government soldiers.[87] There are other instances of attacks in this area that also demonstrate collusion between Government military and the Arab militia operating out of the area of Al-Malam.

218. The findings of the Panel may be summarized as follows:

- There is a consistent weight of evidence that establishes, on a balance of probability, that the attackers were Arab militia from Al-Malam who were actively supported by the Government of the Sudan military.
- Apart from the military engagements with SLA forces in the Martal Valley the attacks were indiscriminate attacks on a civilian population, representing violations of both international humanitarian and human rights law.

Case study 5
Sheiria, Southern Darfur, 19-22 September 2005

219. This case study describes an attack on the town of Sheiria, Southern Darfur, by SLA forces on 19 September 2005 and the related incidents that occurred in Sheiria in the days following the attack (to 22 September). This case study is based on reports of the incidents made available to the Panel by several sources, transcripts of interviews contained in some of those reports and a limited number of primary interviews.

[87] *Source*: AU reports.

Description of events

220. On 19 September 2005, SLA forces attacked the town of Sheiria and quickly took control of the town in an operation lasting approximately two hours. The SLA group attacked the Government of the Sudan garrison in Sheiria, the police station and the Governor's house. The following day, the SLA forces also attacked the village of Khanzan-Jadid.

221. Government soldiers who survived the SLA attack mingled with the population around the AU camp at Sheiria, and later managed to enter the camp itself. On 20 September and again on 22 September SLA fighters surrounded the AU camp and demanded that the Government soldiers be handed over to them. On the latter date Government forces regained control of Sheiria town following heavy bombardment in the vicinity of the town during the morning. Government aircraft were observed in the area during the counter-attack by Government forces on 22 September.

222. A total of 42 Government of the Sudan soldiers were killed in the course of the engagements, 20 of whom, according to the AU investigation team, were treated inhumanely and killed following their capture by SLA fighters. The AU investigation team reported that the bodies of those soldiers were found with their hands tied together, having been shot by SLA fighters.

Discussion and findings

223. On the basis of secondary reports that have been validated, and a small number of primary interviews, the Panel has established that:

- SLA undertook an attack on Sheiria town and nearby Khanzan-Jadid on 19 and 20 September 2005 in violation of the N'Djamena Ceasefire Agreement.
- SLA treated Government of the Sudan soldiers no longer participating in hostilities in a cruel and inhumane manner and killed approximately 20 detained Government soldiers.
- The Government of the Sudan Commanding Officer (Sheiria) acknowledged to the AU investigation team that aircraft were indeed used during the attack of 22 September, maintaining that they were used solely for air surveillance.
- At least two civilians were killed in the attack on Sheiria and a large number of civilians were displaced from the town.
- Civilian property was destroyed during and in the aftermath of the attack.
- The Panel has identified some of the SLA commanders who participated in the attack on Sheiria.

Case study 6
Aro Sharow, Western Darfur, 28 September 2005

224. This case study deals with an attack by Arab militia on the villages of Aro Sharow, Gosmino and Ardja and the camp of internally displaced persons near Aro Sharow. The details of the incidents are derived from secondary sources and interviews with individuals who travelled to the affected area shortly after the

attack. The Panel attempted to visit Aro Sharow on two occasions but was unable to travel because of flight restrictions.[88]

Description of events

225. On 28 September 2005 an Arab militia group of about 400 men mounted on horses and camels attacked the village of Aro Sharow. The attackers were dressed mainly in Government military uniforms and were armed with automatic assault rifles. They fired into the marketplace and the village with machine gun fire, killing 11 people. The attackers entered the camp of internally displaced persons firing their automatic weapons continually, killing 17 more people. They looted the property of displaced persons and villagers and then set 80 shelters or houses alight, destroying them. Those shelters or houses accommodated 4,000 to 5,000 people. Their attack swept through the villages of Gosmino and Ardja in a similar manner. The attackers rounded up the livestock of the area, driving them with them as they withdrew towards the Selea area.

226. During the attack a total of 32 persons were killed; 12 people were seriously injured; 7 people including 2 children went missing. One of the members of the Arab militia who participated in the attack was recognized and identified as being from the Araphat area.[89]

227. A Government military base is situated approximately 300 m from the village of Gosmino. The soldiers there did not intervene during the attack but did fire heavy weapons from their base at the attackers while they were attacking Gosmino. They did not prevent the escape of the attackers with the stolen livestock.

228. A Government military helicopter was seen flying over the area and landing 3 km east of the Jebel Moon Mountains (the direction from which the attack came) immediately prior to the attack.[90] Other witnesses reported that they had seen a black helicopter flying in the area of the mountains (from where the attackers came) two hours before the attack.[91]

229. The Government of the Sudan has not officially commented on this attack but a senior official claimed publicly that perpetrators of the attack were "outlaws" and denied that they had been supported by Government troops.

Discussion and findings

230. The actions of the Government military at the base near Gosmino were particularly ineffective either in responding to the attackers directly (the attack lasted for about two hours, in which time they did not provide any form of protection) or in preventing the escape of the attackers. It is inconceivable that with the communications systems that were available to them they were unable to call for air and other support to curtail the attacks. Moreover, nothing was done to track and capture the attackers after the event.

[88] On the second occasion the Government of the Sudan imposed a ban on all non-military flights north of Geneina in the light of threats by "Colonel" Gibril to fire at any AU or United Nations aircraft in the area of Jebel Moon.

[89] Confidential report provided to the Panel, November 2005 (on file with Panel records).

[90] *Source*: AU reports.

[91] Confidential report provided to the Panel, November 2005 (on file with Panel records).

231. The findings of the Panel may be summarized as follows:

- The attack was perpetrated by a militia group, and was directed exclusively against civilians, constituting a violation of international humanitarian and human rights law.
- The Panel has received information identifying one of the members of the attacking force.
- Further investigation is required to confirm the identities of those who directed or commanded and participated in the attack, using as a starting point the information gathered by the Panel.

Case study 7
Tawilla, Northern Darfur, 29 September 2005

232. This case study deals with an attack carried out on 29 September 2005 on the town of Tawilla (58 km west of El-Fasher) and on the Dali camp of internally displaced persons by Government police and soldiers. The details of the incidents are derived from both primary and secondary sources and include two investigational visits to Tawilla.

Description of events

233. On 29 September 2005 at about 1000 hours a Government convoy of 41 trucks (carrying military personnel and stores) and 11 Land Cruiser vehicles with mounted heavy machine guns stopped near the AU base on the outskirts of Tawilla. The African Union had not been properly notified about this movement of troops. After interaction between soldiers from the military convoy and policemen based at the local Government central reserve police camp (Tawilla), eight military Land Cruiser vehicles carrying soldiers and policemen drove into the town centre. Within minutes gunfire was heard in the village. AU soldiers observed the unfolding events from their "observation point" situated on a rocky hill next to their base.

234. The Government soldiers were in the town shooting, looting shops and setting shops and houses alight. Shopkeepers later described how soldiers or police entering their shops accused them of supporting rebels, beat them and stole goods. Other soldiers or police were moving towards the camp of internally displaced persons that is situated some 3 km from the town. As they moved towards the camp they continued firing at people and setting houses on fire.

Figure 7
Attack on Tawilla by Government forces, 29 September 2005

235. When the Government soldiers or police arrived at the Dali camp of internally displaced persons, several shelters and houses were set alight. Soldiers fired rocket-propelled grenades, assault rifles and heavy machine guns into the camp indiscriminately. The internally displaced persons fled to the surrounding bush and hills to escape. Some made their way to the AU base for safety. Civilians, including women, who showed themselves drew fire.[92] The attack continued for about four hours, when the Government forces withdrew.

236. Five people were killed in the attack. Four of the dead were elderly men who had been busy with farming activities when they were attacked. Heavy concentrated fire from nearby had been directed at those four old men.[93] The fifth victim was an elderly woman. Five people were injured, and all the victims were civilians. Two women were reportedly raped. Houses, shops and shelters were looted and set alight.

237. The Government Police Commander claimed that the Government forces had acted in self-defence after they had come under attack from a large force of rebels at the water point in the town and one of their policemen had been killed.[94] He maintained that his men had acted correctly in self-defence.

[92] Women who were at the AU base decided at one point during the attack to return to their homes to search for family and friends. As they left the security of the AU base they were fired on.

[93] Interview with AU personnel.

[94] This was contradicted by the current Government Police Commander. He denied that any policemen had been killed in the attack but said that two policemen had been abducted by rebels. Interview with Lieutenant Mahady Mohamed Zein Ahmed.

Discussion and findings

238. The Government version of events, that the forces acted in self-defence, is strongly disputed by the African Union and local witnesses.[95] In any event, even if they did initially act in self-defence, this would not have justified the protracted and indiscriminate attack on the entire town and nearby camp — an area of about 6 km². Key aspects of their version of events have little credibility.[96]

239. The Government central reserve police camp is situated on a hill overlooking the town of Tawilla. The Police Commander had a clear and good view of the entire town and attack from his camp. He is also equipped with a pair of good-quality binoculars. It can safely be concluded that he was aware of every aspect of the attack on the town and the camp.

240. The Government Police Commander did not institute an investigation into these events. On the contrary, the Commander related in an interview that the attack was justified by self-defence and denied that his men were responsible for any looting or burning, claiming that if this had happened others were responsible.[97]

241. The findings of the Panel may be summarized as follows:

- Government of the Sudan military and police attacked the town of Tawilla and the Dali camp of internally displaced persons. The indiscriminate nature of the attack, intentional killing of civilians, the lack of adequate precautions to distinguish between civilians and combatants, and the destruction of civilian property (among other factors) during the attack constitute violations of international humanitarian and human rights law.
- The claim of justification arising out of self-defence is not creditable. The scale, duration and magnitude of the attack on civilians cannot support this contention.
- On a balance of probability, members of the police forces have been identified as bearing responsibility, including command responsibility, for the attack.

Case study 8
Tama, Southern Darfur, 23 October 2005

242. This case study deals with an attack by a militia group on the village of Tama, 38 km north-west of Nyala, Southern Darfur. The details of the incidents are derived from secondary sources, namely investigation reports of the African Union conducted at the attack scenes immediately after the attacks and reports from other confidential sources.

Description of events

243. On Sunday, 23 October 2005, the village was attacked by an armed militia group mounted on camels and horses, estimated to be 500 to 1,000 strong. The attackers fired into houses in the village using automatic assault rifles. The villagers fled from the village into the surrounding area but were pursued by the militia group.

[95] Interview with AU personnel and anonymous witnesses 1 and 2, Tawilla.
[96] Interview with AU personnel and anonymous witness 2, Tawilla, and Panel investigation.
[97] Confidential report on Tawilla incidents provided to the Panel (on file with Panel records).

244. Later, after the attackers had apparently withdrawn, survivors made their way to the nearby village of Ama Kasara. A total of 38 villagers were killed and 30 persons were injured in the attack. Three of the dead were identified as members of SLA. Some houses were burned down and looting also occurred during the attack. Crops were damaged and destroyed and approximately 1,500 people were displaced as a result of the attack.

245. Many of the attackers wore Government military uniforms and were well armed with assault rifles. No vehicles were seen in support of the attack. The villagers identified the attackers as Arabs from the Iregad, Saada and Awladmansour tribes from Tanngya and Hajaralnaab villages.

246. On 26 October 2005, the Humanitarian Affairs Commissioner from Nyala, accompanied by the Commander of the regional police base at Ama Kasara, visited Tama to assist with the burying of the dead. While in the village they came across three Arab militia men and arrested them. The arrested men are currently detained at Nyala police station. The Wali for Nyala has appointed a special investigation team to investigate the attack on Tama. It is not known what progress has been made in this investigation.

Discussion and findings

247. The Government of the Sudan has arrested three suspects in this matter and has appointed an investigation team to investigate it. The competency and results of that investigation are currently unknown.

248. The findings of the Panel may be summarized as follows:

- Armed militia groups, allegedly from Tanngya and Hajaralnaab villages, attacked the village of Tama on 23 October 2005.
- The indiscriminate nature of the attack, the intentional targeting and killing of civilians and looting of property constitute serious violations of international humanitarian and human rights law.
- It is not known what steps have been taken by the Government of the Sudan authorities in Southern Darfur to pursue their investigations and to hold to account those found to have committed the attack.

Other cases investigated by the Panel

249. In addition to the case studies presented above, the Panel investigated several other incidents or attacks in Darfur that fell within the scope of provision of information on individuals who commit violations of international humanitarian law. The additional cases include fighting between SLA and JEM in Gereida and Muhajiriya, Southern Darfur (June 2005); and an attack by Government of the Sudan central reserve police on civilians in Tawilla in response to a grenade explosion, Northern Darfur (9 September 2005).

E. Findings: violations of human rights in Darfur

Human rights in Darfur

250. The Panel's research, field investigations and interviews in the Sudan provided a detailed image of the situation of human rights in Darfur, highlighting some of the most critical threats to protection and fulfilment of human rights, and pointing to some of the individuals and entities that by their acts or omissions have committed violations of human rights in Darfur.

251. The patterns of violations of human rights in Darfur have changed markedly since the end of 2004/beginning of 2005. From the beginning of the current phase of the conflict early in 2003 to the end of 2004, some of the most significant threats to human rights arose as a result of large-scale military operations conducted by the parties to the conflict, especially the Government of the Sudan and its allied militia groups, and the concomitant impact on the right to life. Since early in 2005 there have been relatively fewer instances of large-scale attacks on civilians, but the situation is now characterized by a greater number of individual cases of violations of human rights, on the part of both organized armed groups and individuals.

252. While there is always a tendency to compartmentalize violations of human rights into particular thematic clusters, such as sexual and gender-based violence, arbitrary detention and so on, it is evident from the Panel's work that the gravity of the human rights violations come from the interplay of several mutually-reinforcing threats: attacks and acts of banditry or harassment carried out by armed groups can result in killings, looting of property, rape and other forms of sexual violence; in many areas of Darfur the general level of insecurity and lawlessness provides a constant risk of attack or harassment.

253. In many instances the threats to human rights are magnified by the prevailing perception and actuality of impunity for certain human rights violations. The Government of the Sudan has taken many positive steps (see below) to investigate and address human rights violations, but the Panel has found a critical gap between the initiatives launched by the Government, such as the Special Criminal Court on the Events in Darfur, and the capability and will on the part of the Government to fully implement or utilize those initiatives.

254. Violations of the right to life have manifested themselves primarily through attacks undertaken by the Government of the Sudan, SLA, JEM and militia groups during which civilians have been killed, and in individual acts of banditry or robbery. Several of the case studies presented above involve instances of killing of civilians during the attacks. In addition to constituting violations of international humanitarian law, these actions constitute violations of human rights, specifically the right to life.

255. In addition to threats to the right to life, there have been numerous reports of harassment and beatings by Government police and armed forces within and around camps of internally displaced persons.

256. Sexual and gender-based violence has emerged as one of most critical threats to human rights, particularly to human rights of women and girls. The Panel received substantial information from various sources and through its investigations and interviews on the scope and extent of human rights violations in the form of sexual and gender-based violence. Several recent studies, including those

undertaken and published by the Office of the United Nations High Commissioner for Human Rights and by Médecins Sans Frontières, provide data on reported cases of rape and other forms of sexual and gender-based violence.[98] These data, alarming as they are, provide only part of the picture. In many cases, acts of rape are not reported to the authorities because of the social stigma associated with this form of violence, a fear of harassment by the authorities in some areas, and a perception on the part of many victims that the perpetrators act with impunity. In several cases, attackers can be identified by the victims but there is nonetheless an inability or unwillingness on the part of the authorities, especially the police force, to actively pursue some of the complaints.

257. The Panel has gathered information on a large number of cases of harassment, intimidation, arbitrary arrest, detention without trial, physical abuse and torture perpetrated by some elements of the Government of the Sudan security apparatus, including Military Intelligence and the National Intelligence and Security Service. In many cases, citizens have been arrested by national security or Military Intelligence, have been questioned and often beaten or maltreated. The Panel has identified several cases of interest in Northern Darfur and has performed preliminary investigations to track these recent or ongoing cases. In some instances, persons who have been released from detention by Military Intelligence or national security report that they were moved from detention facilities in Darfur to detention facilities in Khartoum.

258. The Panel has received several reports — directly from victims and through intermediate reporting channels — of harassment and intimidation of local, and, to a smaller extent, international non-governmental organizations operating in Darfur.

Actions taken by parties to the conflict to safeguard human rights

259. The Interim National Constitution of the Republic of the Sudan came into effect in July 2005.[99] It contains a Bill of Rights which includes, as an integral part of the Bill, "all rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan" (article 27 (3)). The Bill of Rights sets out the rights of persons, including the right to life and human dignity, personal liberty, sanctity from slavery and forced labour, equality before the law, sanctity from torture, fair trial, restriction on the death penalty, privacy, and many other economic, social and political rights. The Interim National Constitution states that, subject to the provisions of article 211 of the Constitution, no derogations from the rights in the Bill can be made. Article 211 guarantees non-infringement on the right to life, sanctity from slavery and torture, non-discrimination on the basis of race, sex, religious creed, the right to litigation or the right to fair trial even in cases of public emergency.

260. The Bill of Rights marks a very positive development for the people of the Sudan in safeguarding and fulfilling their human rights. There are a number of areas, however, where the provisions of the Interim National Constitution are not in coherence with international human rights treaties and norms and this represents a

[98] "Access to justice for victims of sexual violence". Report of the United Nations High Commissioner for Human Rights (Geneva, 29 July 2005); Médecins Sans Frontières "The crushing burden of rape: sexual violence in Darfur" (Amsterdam, MSF, 8 March 2005).

[99] The Interim National Constitution was adopted by the National Assembly on 6 July 2005 and entered into effect on 9 July 2005.

dichotomy in the Constitution, particularly in the area of coherence between customary law enshrined in the Constitution and the duties and obligations of the Government of the Sudan under the relevant international human rights treaties.

261. The Government of the Sudan has established a number of mechanisms in response to the violations of international humanitarian and human rights law in Darfur. The National Commission of Inquiry was established by Presidential Decree No. 97 in 2004 and was mandated to find facts and collect information on alleged violations of human rights by armed groups in the Darfur States, determine causes of violations when established and possible resulting damage to lives and properties. In June 2005, the Government established the Special Criminal Court on the Events in Darfur, and it has established several other committees and commissions at both the central (Khartoum) level and at the State level in Darfur.

262. Such mechanisms represent positive steps towards ensuring protection and fulfilment of human rights and enforcing accountability among those proved to have committed violations of international humanitarian and human rights law. However, these positive developments need to be matched by equal positive developments in fully implementing and operationalizing the various mechanisms — that is, there is currently a significant "implementation gap".

263. The Panel has received minimal information on actions taken or planned by SLA and JEM to ensure respect for human rights by their members and to ensure that human rights are safeguarded in areas within which the respective groups operate. Especially in the light of the role of SLM/A and JEM in the Abuja process, there is a need to increase awareness within the groups of the tangible steps required if the human rights of individuals in Darfur are to be safeguarded.

F. Offensive military overflights

264. The Panel developed a number of criteria to assist in its determination of what might constitute an "offensive" military overflight. Criteria identified by the Panel include:

- Overflights in pursuit of a specific military objective that are undertaken for purposes other than defending the aircraft from a clear and imminent threat.
- Use of the aircraft to achieve military advantage disproportionate to that required to neutralize a clear and imminent threat.
- Unprovoked attack with aircraft, such as strafing or bombing of villages.
- Use of aircraft in support of offensive ground operations.
- Retaliatory attack, i.e., action in response to a prior attack.
- Flights that deposit troops participating in an imminent offensive operation.
- Operation of the aircraft in a manner to intimidate or harass, for example flying mock attack runs, frightening children and animals, destroying buildings with rotor wash, sonic booms etc.

265. Since the adoption of Security Council resolution 1591 (2005), there have been a number of unconfirmed allegations of the offensive use of Government

helicopters in Darfur, the latest as recent as late November 2005. All those allegations have been denied by the Government of the Sudan.

Helicopter attack on 23 July 2005

266. The Panel was able to verify at least one incident involving two Sudanese Air Force Mi-24 attack helicopters in an area on the Nyala to El-Fasher road south of Shangil Tobayi in Northern Darfur State, on 23 and 24 July 2005 (see case study 2 above). On that day a Sudanese military unit escorting a commercial convoy was ambushed, and pinned down, by rebel forces. During the initial engagement the commanding officer and two other members of the unit were killed and a number of other troops injured. Air support was called in and two Mi-24 stationed in Nyala were dispatched to the location. While the Government of the Sudan initially acknowledged that the helicopter fired on rebel positions — at the time the Government claimed the operation was defensive in nature, to help relieve the pinned-down military unit and thus did not constitute a violation of the Security Council ban on "offensive overflights",[100] at subsequent meetings the Government denied that the helicopters fired and claimed they were involved only in reconnaissance and directing ground troops.[101]

267. An African Union investigation however determined that at least one of the helicopters fired during the engagement. When visiting the site of the attack, Ceasefire Commission investigators identified the remains of a recently fired Russian-made 57-mm SKOG flechette-filled, air-to-ground rocket (see figure 8).[102] According to the investigator, at the time the investigation was conducted, the remnants of the missile were new and fresh impact marks were visible near the rocket casing.[103]

[100] Interview with Major General Ismat Zain al-Din, Director of Operations, Khartoum, 5 September 2005, and with General Mohammed Abdul Gadom and General Ibrahim el-Bushara, Khartoum, 6 September 2005.

[101] Interview with Major General Gaffar Muhamed el-Hassan, Commander, Western Military Region, El-Fasher, 1 November 2005, and with Major General Ismat Zain al-Din, Director of Operations, Khartoum, November 2005.

[102] Those weapons were frequently used during Government operations in 2004 and early 2005 and United Nations-contracted explosive ordnance personnel have found numerous remains of SKOG rockets in Northern and Southern Darfur. Interview with explosive ordnance disposal technician, El-Fasher, 9 November 2005.

[103] The determination that the rocket had been fired during the reported attack was based on the lack of weathering of the rocket casing, the fresh impact marks, and interviews with an eyewitness to the attack.

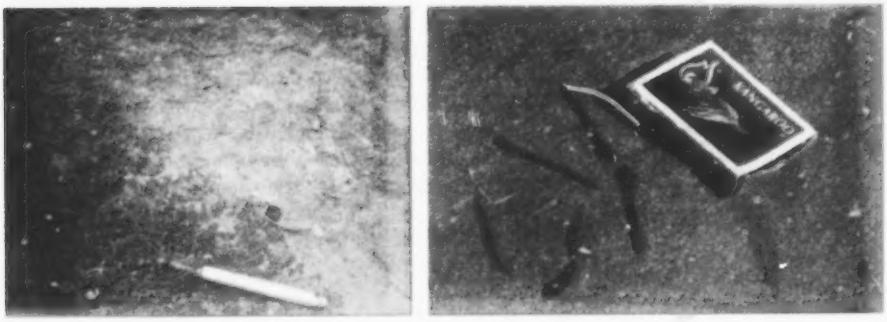

Figure 8
57-mm SKOG air-to-ground rocket (left) found at Abu Hamra and flechettes from SKOG air-to-ground rocket (right)

Allegations of intimidation using low-flying helicopters

268. The Panel has also received a number of credible allegations that Government helicopters are apparently flying very low over fields and villages and intimidating the local population. For example, local sheiks had complained to United Nations observers that on 5 and 6 November 2005 Government helicopters flew extremely low over fields and villages in the area of Um Hashaba, which frightened and intimidated the local population since the same type of aircraft had been used by Government forces in earlier attacks.

Use of helicopters in support of offensive ground operations

269. The Government of the Sudan has also used Mi-24 attack helicopters to reconnoitre for and direct offensive Government military operations in violation of the N'Djamena Ceasefire Agreement. The most recent incident was a Government attack on rebel positions in the Jebel Moon area, Western Darfur, on 19 November, when reportedly at least two Mi-24 attack helicopters were involved in the operation.[104] Rebel allegations that the helicopters fired on their positions could not be confirmed but clearly the helicopters assisted in the Government attack.[105]

G. Observations and recommendations

Impeding the peace process

270. To the extent that Abdul Wahid Mohamed al-Nur and Minni Arko Minawi fail to take appropriate steps to reconcile competing perspectives and leadership ambitions in furtherance of the Abuja negotiations and in the best interests of their constituency, the Committee should monitor the actions of both individuals and consider designating these individuals as subject to the targeted measures in

[104] Information provided to the Panel from two separate confidential sources, El-Fasher, November 2005.

[105] "Darfur rebel SMRD injures 5 AU troops as talks begin", Reuters, 30 November 2005.

paragraphs 3 (d) and (e) of Security Council resolution 1591 (2005) in the event that their future actions unduly impede the peace process.

271. The Committee and the Security Council should adopt a "zero tolerance" approach to violations of the N'Djamena Ceasefire Agreement. Any future ceasefire violation reports verified by the Joint Commission should be used as the basis for direct action by the Committee against the leadership of the party found to be in violation of the Agreement and against the local commanders who committed the offending act. Such targets for possible future sanction in the event of a violation committed by their respective forces should include the senior leaders of SLM/A, JEM and senior military leaders within the Sudanese armed forces.

272. In paragraph 6 of resolution 1556 (2004) the Security Council expressed its intention to consider actions, including measures as provided for in Article 41 of the Charter of the United Nations, on the Government of the Sudan, in the event of non-compliance with the demands of the Council to "disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out human rights and international humanitarian law violations and other atrocities". In the light of the abject failure of the Government of the Sudan to comply with these demands, the Security Council should consider (a) subjecting individuals identified by the Panel in this report as failing to disarm the militias to the targeted measures in paragraphs 3 (d) and (e) of resolution 1591 (2005); and (b) additional measures against selected members of the Government of the Sudan as provided for under Article 41 of the Charter.

Violations of international humanitarian and human rights law

273. The Panel has identified a number of individuals who the Panel asserts, on the balance of probabilities, have committed or are responsible for acts or omissions that constitute violations of international humanitarian and human rights law. The Panel recommends that those individuals be considered by the Committee for designation as being subject to the provisions of paragraphs 3 (d) and (e) of resolution 1591 (2005).

274. To the extent that Military Intelligence and National Security personnel continue to arbitrarily detain, expose to physical and psychological abuse, and torture citizens, while violating their right to a fair trial, the Committee should consider senior leadership of the Military Intelligence and national security agencies for designation as being subject to the provisions of paragraphs 3 (d) and (e) of resolution 1591 (2005). The Committee should consider immediately applying the aforementioned measures to the individuals named in the confidential annex to this report.

275. The Security Council should consider options for establishing a standing civilian protection monitoring capacity to monitor, investigate and report directly to the Council on acts that may constitute violations of international humanitarian and human rights law in Darfur.

276. The Security Council should consider ways in which the provision of information to the Committee on individuals who commit violations of international humanitarian and human rights law can best further the objectives of the Council expressed in resolutions, including specifically resolution 1593 (2005). In this

regard, the Council should consider how best to maximize complementarity between various resolutions adopted by the Council.

Offensive military overflights

277. In the light of the use by the Government of the Sudan of attack helicopters in support of offensive ground operations and, on one occasion identified by the Panel, in direct offensive engagements, the Security Council should consider options for ensuring that military air assets are not employed for offensive purposes by the Government of the Sudan in the future. Possible options for consideration include (a) establishing a prohibition on the operation by the Government of the Sudan of all military aircraft in Darfur, except in cases where the use of such aircraft is approved in advance by the Committee on the basis of a request submitted by the Government of the Sudan; and/or (b) designation of those who request or authorize the use of air assets for offensive purposes, including use in support of offensive ground operations, as subject to the provisions of paragraphs 3 (d) and (e) resolution 1591 (2005).

Annex I

List of institutions consulted

New York

International Crisis Group

Office of the United Nations High Commissioner for Human Rights

Permanent Mission of Chad to the United Nations

Permanent Mission of China to the United Nations

Permanent Mission of Denmark to the United Nations

Permanent Mission of Eritrea to the United Nations

Permanent Mission of Ethiopia to the United Nations

Permanent Mission of the Libyan Arab Jamahiriya to the United Nations

Permanent Mission of Sudan to the United Nations

Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations

Office for the Coordination of Humanitarian Affairs

Washington, D.C.

Council on Foreign Relations

International Monetary Fund

United States Customs Service

United States Agency for International Development

United States Department of State

United States Department of the Treasury

London

Africa Confidential

Ahmed Diraige

Bank of England Financial Sanctions Unit

Her Majesty's Revenue and Customs

Her Majesty's Treasury

Justice Africa

Sudan Organization Against Torture

United Kingdom Foreign and Commonwealth Office

Various international non-governmental organizations

Lyon

Interpol

Paris

Ministry for Foreign Affairs of France

Brussels

Human Rights Watch

Council of the European Union

European Commission

Geneva

Office of the United Nations High Commissioner for Human Rights

Office for the Coordination of Humanitarian Affairs

The Hague

International Criminal Court

Netherlands Ministry for Foreign Affairs

Addis Ababa

African Union Conflict Management Division

African Union Darfur Integrated Task Force

Ministry for Foreign Affairs of Ethiopia

United Nations Assistance Cell for the African Union

United Nations Liaison Office to the African Union

United Nations Children's Fund

Khartoum

Advisory Council on Human Rights

African Union Mission in the Sudan

Customs Authority

Embassy of the United Kingdom

Ministry for Foreign Affairs

Ministry of Humanitarian Affairs

Ministry of the Interior

Ministry of Justice

National Focal Point for Small Arms and Light Weapons Proliferation

National Intelligence and Security Service

Sudanese armed forces

Sudanese air force

United Nations Mission in the Sudan

Darfur

African Union Mission in the Sudan (Force headquarters El-Fasher and various sector/group site camps)

Arab tribal leaders

Military Intelligence, El-Fasher

National Intelligence and Security Service, El-Fasher

Office of the *Wali* (Northern Darfur)

Office of the Prosecutor (Southern Darfur)

Office of the *Wali* (Southern Darfur)

Office of the *Wali* (Western Darfur)

Popular Defence Force Command, Nyala

Western Military Region Command, El-Fasher

United Nations Mission in the Sudan

Various international and Sudanese non-governmental organizations

Sudan Liberation Movement/Army

Port Sudan

Red Sea Customs Authority

N'Djamena

Embassy of France

Embassy of the United States of America

Ministry of Economy and Finance

Ministry for Foreign Affairs and African Integration

Ministry of Justice

Ministry of Public Security

Ministry of Territorial Administration

Office of the United Nations High Commissioner for Refugees

Representatives of the Justice and Equality Movement and Sudan Liberation Movement/Army

Tine, Chad

National Movement for Reform and Development

Abeche, Chad

Governor Mohamed Saleh

Mohamed Saleh Hamid "Harba"

Abuja

Justice and Equality Movement

Sudan Liberation Movement/Army

Annex II

Additional background information on the security context

Overview

1. This annex provides supplementary information on the security context in Darfur in several key areas: (a) regional dynamics underlying the conflict; (b) Chadian rebels and the conflict in Darfur; (c) select Government of the Sudan security services; (d) rebel disunity and lack of control; and (e) military strategy and arms production.

Regional dynamics and factors influencing the conflict in Darfur

2. Since independence, the greater Horn of Africa region has been plagued with incessant war and Machiavellian politics.[a] The Central African Republic, Chad, the Democratic Republic of the Congo (ex-Zaire), the Sudan, Uganda, Ethiopia, Eritrea and Somalia have all suffered from periods — often prolonged — of civil war that were aggravated by the propensity of neighbouring States to covertly support rebellions in neighbouring countries. Sudan has been both an active proponent and a victim of this type of politics.

3. As early as the 1960s, the Sudan and Darfur were drawn into the Chadian civil war (one of the longest on the African continent) when the Front de libération nationale du Tchad was founded on Sudanese territory, in Nyala in June 1966.[b] Over the subsequent decades, Darfur would serve as a staging area and sanctuary for a host of insurgent groups battling governments in Chad, the Libyan Arab Jamahiriya and Khartoum.

4. The outbreak of the Chad-Libyan war of 1986/87 increased Libyan activities in Darfur, not only with troop movements through Sudanese territory, but also with arms and funds provided to Arab militias organized around a pan-Arab ideology.[c] This pan-Arab ideology has local support in a nebulous group called the "Arab Gathering" (Tajuma al Arabi), seeking to create an Arab belt in Darfur, and which appears to motivate a hard-core group of Arab leaders from Darfur.[d]

5. The Sudan continues to have hostile or ambivalent relations with a number of its neighbours. Despite attempts at rapprochement between Eritrea and the Sudan, the two countries continue to host each other's opposition groups. Idriss Déby, the President of Chad, who seized power in N'Djamena with backing from the Government of the Sudan, generally supports the Government in Khartoum, but

[a] See, for example, Terrence P. Lyons, "The Horn of Africa Regional Politics: A Hobbesian World", in W. Howard Wriggins, ed., *Dynamics of Regional Politics* (New York, Columbia University Press, 1992).

[b] Gerard Prunier, *Darfur: the Ambiguous Genocide* (Ithaca, N.Y., Cornell University Press, 2005), p. 43.

[c] Douglas Johnson, *The Root Causes of Sudan's Civil Wars* (Bloomington and Indianapolis, Indiana, Indiana University Press, 2003), p. 140, and Gérard Prunier, op. cit., pp. 54-80.

[d] Julie Flint and Alex de Waal, *Darfur: A Short History of a Long War* (London, Zed Books, 2005), pp. 38, 39 and 49-57, and International Crisis Group, *Darfur Rising: Sudan's New Crisis*, Africa Report No. 76, 25 March 2004, pp. 9-11.

many of his Zaghawa and Masalit supporters sympathize with and support their ethnic brethren across the Chadian-Sudanese border in Darfur.

Chadian rebels and the conflict in Darfur

6. The security situation in Darfur is significantly complicated by the presence of a number of anti-Chadian rebel groups in Darfur. These groups not only threaten and destabilize Chad, but also engage in criminal activities in Darfur and probably cooperate with Darfurian rebel elements. A significant number of ex-Chadian military personnel have also joined the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM).

7. In early October, a large number of Chadian Army troops (the exact number is disputed by the Government of Chad) defected with their equipment to the opposition. Some of these defectors formed the Socle pour le changement, l'unité nationale et la démocratie (SCUD), which is reportedly based inside Darfur near the Chadian border.[6]

8. In April 2005, President Idriss Déby of Chad accused the Government of the Sudan of supporting some 3,000 Chadian rebels in the Sudan. While that number is probably exaggerated, the presence of Chadian rebel groups in Darfur has been confirmed by the African Union Mission in the Sudan and other international observers. Prominent Chadian armed groups operating in or near Darfur include the Front national démocratique du Tchad, led by Hassan al-Jinedi, who is alleged to have been involved in the attack on the civilian village of Madayon, Chad, on 26 September 2005; the Rassemblement pour la démocratie et les libertés, led by Mahamat Nour Ab Delkerim, alleged to be operating between Nyala and Geneina; and the Movement pour la justice et la démocratie au Tchad, led by Hassan Mardegue and based in Ouaddai, Chad, near the Sudanese border.

Select Government of the Sudan security services

Military Intelligence

9. Military Intelligence (Ittakhbarat al-Askariyya) is a branch of the General Staff with its own administration and command. Military Intelligence reports both through the operational military chain of command and directly to the Presidency through the Chief of the Military Intelligence Branch.

10. Military Intelligence also has an operational unit called the border intelligence guard (Ishtikhbarat al-Hudud), initially created for the conflict in the south. The guard has headquarters in Khartoum and is currently headed by General Al-Hadi Hamid el-Tayeed. Members of the guard are recruited from the local population, ostensibly for their local knowledge of the region and of the different tribes living in specific regions.

[6] The self-proclaimed leader of SCUD, Yaya Dilo Djerou, has said that the group numbers over 700. The Government of Chad claims that there were only approximately 80 deserters.

11. The Government of the Sudan began recruiting new border intelligence guard units in Darfur in early 1993. Reports suggest that some 3,000 border intelligence troops have been recruited and deployed in Darfur.

Popular Defence Force (PDF)

12. The paramilitary Popular Defence Force (PDF) was formed in 1989, and was from the beginning closely linked to the National Islamic Front. Initially, the Front envisioned that PDF would eventually replace the Sudan Armed Forces as the main defence army of the country and Government. The split which erupted between President Omar Hassan Al-Bashir and Speaker Hassan Al-Turabi in 1998 was in part over the role of PDF in relation to the defence force. President Al-Bashir, representing the army, appears to have won that battle, temporarily at least. PDF serves on the front in the war against the rebels, despite being a "political" fighting force.

13. The mandate of PDF derives from the Popular Defence Force Act of 1989, which defines PDF as "paramilitary forces" made up of Sudanese citizens who meet certain criteria. According to the Act, a body known as the Council of the Popular Defence Force advises the Commander-in-Chief on matters affecting PDF, including areas in which PDF should be established, military training and education for PDF members and other issues. Article 6 of the Act states that the functions of PDF are to assist the People's Armed Forces and other regular forces whenever needed, contribute to the defence of the nation and help to deal with crises and public disasters, and perform any other task entrusted to them by the Commander-in-Chief himself or pursuant to a recommendation of the Council.

14. According to information gathered by the International Commission of Inquiry (see S/2005/60, paras. 80-84), local government officials are asked by army headquarters to mobilize and recruit PDF forces through tribal leaders and sheikhs. The Wali is responsible for mobilization in each State because he is expected to be familiar with the local tribal leaders. As one tribal leader explained to the Commission, "in July 2003 the State called on tribal leaders for help. We called on our people to join PDF. They responded by joining, and started taking orders from the Government as part of the State military apparatus".

15. PDF provides arms, uniforms and training to its inductees, who are then integrated into the regular army for operations. At that point, the recruits come under regular army command and normally wear the same uniform as the unit into which they are inducted.[f]

Central reserve police

16. The Ministry of the Interior trains and deploys to Darfur combat-trained central reserve police forces, know locally as "police soldiers". While these troops are nominally part of the Sudanese police hierarchy, they can be, and have been, used in joint combat operations under the tactical control of the Sudanese Army.[g]

[f] Interview with Lt. Col. Al-Amin, PDF Commander, Southern Darfur, Nyala, 28 August 2005.
[g] Interview with Major General Ismat Zain Al-Din, November 2005.

Border intelligence guard

17. The border intelligence guard (Istikhbarat al-Hudud) headed by General Al-Hadi Hamid el-Tayeed, appears increasingly to be the body of choice for the integration of the Janjaweed. It was created in early 2003 in a public ceremony during which the Government of the Sudan granted amnesty to a large number of prisoners, enlisting them to fight the rebels. It is annexed to and funded by the army, but controlled by Military Intelligence (see para. 9 above). It is given both arms and logistical help by the army and can call for air and armed support when needed.

Rebel disunity and lack of control

18. Rebel disunity and the independence of individual field commanders have drastically exacerbated insecurity in Darfur. The struggle over the chairmanship of the Sudan Liberation Movement (SLM) between Minni Arko Minawi and Abdul Wahid has led to clashes between SLA units, arbitrary arrests and the unlawful killing of SLA soldiers. In addition, tensions between SLA and JEM forces has led to violent clashes, most notably at Graida, South Darfur, in June 2005. Most significantly, lack of a clearly delineated hierarchy and command and control structure has allowed individual rebel field commanders and their troops to commit acts of banditry and violations of international humanitarian law and human rights, and to violate the N'Djamena Ceasefire Agreement with impunity and for themselves and their ostensible leaders.

Military strategy and arms production

19. The strategy used in Darfur has been adapted from the one used in southern Sudan, with informal pro-Government militias being armed and provided with air support to attack largely civilian targets and displace the potentially disloyal non-Arab population. This has allowed the Government to claim that it is not responsible for the violence and permitted its regular forces to guard the towns without a major redeployment from the south. This strategy has been called counterinsurgency on the cheap,[6] with the international community bearing the brunt of the cost of housing and caring for refugees and internally displaced persons, conveniently concentrated in camps where they could provide little support to the insurgents.

20. Over the last decade, the Sudan has significantly increased its ability to produce its own light weapons and ammunition. According to well-informed sources, the Sudanese Military Industrial Corporation operates three military plants near Khartoum that produce ammunition, light infantry weapons, military vehicles and Sudanese versions of the T-55 tank.

[6] Alex de Waal, "Counterinsurgency on the cheap", *London Review of Books*, vol. 26, No. 15, 5 August 2004, pp. 25-27.